2045

PRACTICKS:

OR, A

SYSTEM

Of the more ancient

LAW

OF

SCOTLAND.

COMPILED BY

Sir *JAMES BALFOUR* of PETTINDREICH,

LORD PRESIDENT OF THE COURT OF SESSION.

Carefully publiſhed from ſeveral Manuſcripts.

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M.DCC.LIV.

The PUBLISHER to the READER.

SIR *JAMES BALFOUR* of *Pittendreich*, the Compiler of this Book, was a Son of *Balfour* of *Monquhanny*, in the Shire of *Fife*, whoſe Predeceſſors had been, for a long time, in Poſſeſſion of the Lands of *Monquhanny*. In his younger Years he had got a liberal Education, and being a Perſon of a bright Genius, he made a conſiderable Proficiency, not only in the more ordinary Literature, but alſo in the Studies of Divinity and Law, with a View to become a Clergyman: For in thoſe Days a ſufficient Knowledge in the Laws, both Civil and Eccleſiaſtick, was a neceſſary Qualification in all who expected to riſe to Preferment in the Church, not only that they might be enabled to acquit themſelves legally and regularly in the Eccleſiaſtick Courts, but alſo that they might be fit for ſerving their King and Country skilfully and honourably in the Civil Adminiſtration: Becauſe the more dignified of their Number, were obliged to ſit in Parliament; ſeveral of them were always of the King's Privy Council: It had been then alſo expreſly provided, that the Preſident, and one half of the other Judges in the Court of Seſſion, which is the higheſt Court of Law with us, ſhould be Clergymen; and from among them were frequently choſen Ambaſſadors and Officers of State. To execute ſuch Offices worthily, required both Sagacity and Learning: And it is certain, that for the moſt Part they were as well diſcharged by Men of that Order, as by any others whatever: And that our Author was ſufficiently qualified, is paſt all Doubt; but an unhappy Affair retarded his Promotion.

IN the Year MDXLVI. ſome Gentlemen of *Fife*, and others, almoſt all of them Vaſſals or Servants of Cardinal *Betoun* Archbiſhop of *St. Andrews*, had aſſaſſinated the Cardinal in his own Caſtle of *St. Andrews*, being inſtigated and bribed to that deteſtable Action by *Henry* VIII. King of *England*[a] and his Council. Having inhumanely diſpatched the Cardinal, they took Poſſeſſion of his Caſtle, and all that was within it, and determined to keep it for their Ally *Henry* VIII. who was to make them great Men, and to aſſiſt them with an Army; and in the mean time, while they were beſieged, they

[a] Dr. Mackenzie's Lives, vol. 3. p. 18. Haynes's State Papers, p. 32.

they received Victuals, Ammunition, Gunners, and other Aſſiſtance from *England* by Sea.

IN the Caſtle they found the Governor of *Scotland*'s eldeſt Son, whom they detained amongſt them for their greater Security: And ſome other Perſons in the Neighbourhood, who were not originally on the Plot, perceiving their long Impunity, joined them, in hopes of enlarging their Fortunes in troubleſome Times; and among others, it ſeems Mr. *Balfour* and two of his Brothers, *David* and *Gilbert*, went over to them, whether upon the ſame Deſign, I cannot be poſitive, but it was an unlucky Step: For the King of *France* having ſent a Navy, with Soldiers and Artillery to beſiege the Caſtle, it was ſoon demoliſhed, and the Beſieged all carried Priſoners to *France*, where the moſt of them were condemned to the Galleys.

WE are told that Mr. *Balfour* himſelf denied that he had any thing to do with the Caſtle of *St. Andrews*, or with the Galleys; and *John Knox* our Reformer, who certainly had to do with both, affirms the contrary [a]: Were we ſure what *Balfour* himſelf ſaid, it might perhaps determine the Controverſy; but as we have both Sides of the Story through *Knox* only, his Authority is of ſmall Weight; for he takes the Liberty to call the other *Blaſphemous Balfour*, and a Man without God [b], becauſe, forſooth, he had ſaid that he would not communicate with *Calviniſts*. But whatever may have been the Caſe as to theſe Matters, that he was carried out of the Caſtle of *St. Andrews* to *France* among the other Priſoners, there is no Reaſon to doubt.

[a] Hiſt. Book 1. p. 77.

[b] P. 75.

WHEN the Treaty betwixt the *French* and *Engliſh* came to be negotiated in the Year 1550, the latter obtained privately that the *French* ſhould connive to let theſe Priſoners their Allies make their Eſcape; for to make an Article in the Treaty for their Liberation was not to be done; and to have them ſet at Liberty in a publick Manner was not to be expected. Mr. *Balfour* was afterwards made Official of *Lothian*; but being of the Reformed Religion, though no *Calviniſt*, he joined in the Tumults about ſetting up the Reformation, although not very cordially, as they themſelves alledged [c], and then was made Rector of *Fliſk*. In *November* 1563, it pleaſed Queen *Mary* to advance him to be a Lord of the Seſſion. Soon thereafter, *viz.* on the eighth Day of *February* 1564, when the four Commiſſaries of *Edinburgh* were firſt conſtituted, he was named in the firſt Place by the Queen, with a yearly Salary to him of 400 Marks, whereas the reſt had 300 Marks allotted to each of them [d]. And in *July* 1565, ſhe was pleaſed to admit him into her Privy Council, about the Time in which the Rebellion broke out, for hindering her Marriage with Lord *Darnly*.

[c] Knox's hiſt. Book 2. p. 188. See p. 201. of this Book, l. 1.

[d] See the Charter in tit. Commiſſariat, p. 670.

THESE Promotions raiſed no ſmall Envy againſt him, in ſo much that in *February* the next Year, it was agreed to murder him among others, when *David*

David Rizio was murdered [a]; but the Conſpirators were diſappointed, for of all thoſe whom they had appointed to die, they found none but *David Rizio* only. And that Matter turned out rather to our Author's Advantage; for Mr. *James Macgill*, by being concerned in *Rizio*'s Murder, loſt his Office of Clerk Regiſter, which was conferred upon Mr. *Balfour*; at which Time alſo he was made a Knight: For from that Time forward his Name is always thus entered in the Council-book, *Jacobus Balfour de Pittendreich, miles.*

[a] See Bp. Keith's hiſt. p. 332.

THAT very ſame Year 1566 he is one of thoſe commiſſioned for reviſing, correcting and publiſhing the old Laws called *Regiam majeſtatem*, &c. and the Acts of Parliament. In the Beginning of the Year 1567, he was made Governor, or rather Deputy-Governor of the Caſtle of *Edinburgh*, under *James* Earl of *Bothwell:* Yet when the Rebellion broke out in the Month of *May* that ſame Year, upon the Pretence of the Queen's Marriage with that Earl, he favoured it, or at leaſt connived at their Doings. It hath been affirmed by ſeveral Writers, that being intruſted by the Earl of *Bothwell* with ſome Love Letters which the Queen had written to him, and the Earl deſiring to have them returned to him by one of his Servants, that Sir *James* delivered them indeed, but not till he had firſt privately appriſed the Earl of *Morton* and his Aſſociates of the Matter, who thereupon ſeized them with his Servant. But this Story ſeems to have no ſolid Foundation: For *Murray* and *Morton* themſelves did never in any of the Declarations that they gave concerning theſe Letters, make the leaſt Mention of any ſuch Matter; but rather ſeem to have ſhunned to account how the Letters ſhould have happened to be found with *Bothwell*'s Servant. The Letters themſelves too have been looked upon by moſt People as Forgeries; and it is certain, that there is juſt now in the Preſs a Treatiſe to prove they were nothing elſe, from intrinſick as well as extrinſick Evidence: If ſo, Sir *James Balfour* muſt have been wrongfully calumniated, as betraying his Truſt in that Matter.

IT would ſeem the Earl of *Murray* had not an entire Confidence in Sir *James*, for he had no ſooner got himſelf made Regent, than he laid himſelf out to get the Caſtle of *Edinburgh* out of his Hands; which he effected, as ſome ſay, by Gifts of Lands, and a great Sum of Money. And it appears from the Records under the Privy Seal, that *Murray* admitted him a Lord of his Privy Council, and made him Commendatar of the Priory of *Pittenweem*, upon the 12th Day of *September* 1567. At the ſame Time *Murray*, being deſirous to have his Confederate *Macgill* reſtored to the Office of Clerk Regiſter, of which he had been deprived for the Cauſe mentioned already, there was a Bargain ſtruck, whereby Sir *James* was to reſign that Office in favours of *Macgill*, for which he gets a Charter, 26th *December* 1567, for a yearly Penſion of five hundred Pounds, and alſo had been made Preſident of the Seſſion upon the ſixth of that ſame Month, over the Head of *William Baillie* Lord *Provand*, who had been in the Chair for ſome ſhort Time; and *Provand* was declared to be Preſident always in Sir

James

James's Abſence. *Murray*'s Pretence for this Treatment of *Provand* was, that ſo the College of Juſtice might be filled according to its firſt Inſtitution, by which it had been provided that the Preſident ſhould always be a Prelate or dignified Clergyman.

BUT, in the Year 1569, *Matthew* Earl of *Lenox*, then reſiding in *England*, gave a Commiſſion to one of his Agents, or Servants, to accuſe Sir *James* of the Murder of the King, *Lenox*'s Son; upon which the Earl of *Murray* then Regent, put him under Confinement; but ſoon found out a Pretext for enlarging him, without bringing him to any Trial. The next Year *Murray* being ſhot at *Linlithgow*, and *Lenox* coming to *Scotland*, in order to get into the Regency, Sir *James* avowedly joined the Party that ſtood up for Queen *Mary*; and *Lenox* paſt an Act of Forfeiture againſt him on that Account, and, "for having been Art and Part, of the Foreknow-"ledge, treating and conſulting of the King's Slaughter."

THE Civil War ſtill continued till the Pacification at *Perth* was concluded in the Year 1573, and our Author had done a great deal to bring about that Pacification, as appears from a Letter which he writes to *Killigrew* the *Engliſh* Ambaſſador, from *Burleigh*, 12th *January* [a], "After your "Departure I diſcourſed with the Regent about my Peace; I do not find "that Diſpatch which I expected, notwithſtanding his Promiſe. You "know upon what Terms I joined them: You know what I have done "for a Pacification ſince you came to *Scotland*. My Deſires are, only to "have an Act of Indemnity for myſelf, my Brother, and Servants, who "have engaged in the late Troubles; to have a Confirmation of our Rights "to our Lands, Goods, *&c.* and to be reſtored to the ſame Poſts and Con-"dition I was in before the Troubles. You may conſider that we ſub-"mitted upon your Perſuaſion, and have given an Example to others, "who will not be ſo willing to come in, when they ſee how we are hand-"led. There is Difficulty made to grant our Remiſſion for the Slaughter "of *Lenox*, which was done publickly at an Engagement, tho' I was not "there preſent. Next, they will not delay the Trial about the King's "Murderers: Though I declare my Innocence; yet I find a preſent Trial "not without Peril; becauſe the Party-heat of ſome People, who voted our "Forfeiture upon that Account, is not yet abated, which Time may do. "I deſire, if your Letters in my Behalf have not Succeſs, you may pro-"cure your Sovereign's Letters to the Regent in my Behalf about the "Matter aforeſaid."

[a] Cot. Libr. Cal. c. 4.

Killigrew it would ſeem had applied for him to *Morton*, and he was permitted for ſome Time to live peaceably, ſo long as *Morton* had need of his Aſſiſtance; for he found him of very great Uſe in bringing the Earl of *Huntly* to agree to the Pacification, which was concluded at *Perth* in *February* 1573. But not long after that, *Morton*, having accompliſhed all the Ends in which he thought Sir *James* could ſerve his Turn, he choſe, for his own particular Views, to be rid of him; and for that Pur-

poſe

poſe incited ſome zealous Eccleſiaſticks to raiſe a Clamour againſt him, as a forfeited Rebel and Regicide. *Morton* nevertheleſs thought it not expedient to bring him to any Trial on that Account; but he found himſelf obliged to retire into *France*, where, for the moſt Part, he reſided till *December* 1580, when he came home again; and, in his Turn, laid himſelf out ſtrenuouſly to bring *Morton* to Juſtice for King *Henry*'s Murder, and produced the Band granted by the Nobility to the Earl of *Bothwell*, by which they not only declared him innocent of the King's Murder, but alſo engaged to promote a Marriage betwixt him and the Queen, and to fortify him therein againſt all Mortals, at the Expence of their Lives and Fortunes, as they ſhould anſwer to God, and upon their Faith and Conſciences; or, if they did otherwiſe, they ſhould have no Reputation or Credit in Time coming, but to be accounted unworthy and faithleſs Traitors. This Band had been ſubſcribed by *Morton* among the foremoſt, and yet he had been the firſt who found Fault with that Marriage, after it was treaſonably brought about. The other Particulars which were produced againſt *Morton*, cannot be ſpecified at preſent; but it is certain in general, that his Peers declared, "That they being ripely adviſed with his Indictment, the Tokens infal-"lible and moſt evident, with the Probations produced and uſed for veri-"fying thereof, did all with one Voice find the ſaid Earl guilty of Art and "Part, Foreknowledge, and concealing the King's Murder:" For which Reaſons he loſt his Head.

IT has been ſaid by ſeveral Writers [a], thar Sir *James Balfour* produced againſt *Morton* a Deed drawn up and ſigned by him and others of that Party, for murdering the King, which they delivered to *James* Earl of *Bothwell:* And ſuch a Story prevailed at that very Time, as appears by an original Letter, and a Memorial ſent along with it, dated 3d *February* 1580, written partly in Cyphers by the *Engliſh* Secretary *Walſingham* [b], in which he tells his Correſpondent, "That Sir *James Baford*, "condemned of the Slaughter of the King's Father, had been called into "*Scotland* by *Lenox*, without the Privity of the King. And whereas the "ſaid Sir *James* found in a green Velvet Desk, late the Earl of *Both-*"*well*'s, and ſaw, and had in his Hands the principal Band of the Conſpi-"rators in that Murder, and can beſt declare and witneſs who were Au-"thors and Executors of the ſame: He is drawn by *Lenox* to ſuppreſs the "Truth, and to accuſe ſuch as he himſelf knoweth to be innocent, and as "by Order of Law will be ſo found, if they may have due Trial, which, "contrary to all Juſtice, is by *Lenox*'s Means denied.".

[a] Cauſſin and Blackwood, in Jebb's Collect. II. p 69,70,212. 214. Scotſtarvet's ſtaggering State. Carte's hiſt. III. 821.
[b] Cottonian Library, Cal. c. 6.

SOME will be apt to think that the Authority of a Perſon in ſuch a publick Station could not fail to be of Weight in a Point of this Nature: But this may ſerve as an Example, how little Credit is in ſome Caſes to be given to the Letters of People living at a Diſtance from the Place where the Tranſactions are ſaid to happen, eſpecially if they are Stateſmen, and do intereſs themſelves upon one Side of the Queſtion, which *Walſingham* did; for the Queen of *England*, and her Court, were very keen for ſaving *Mor-*

ton. That *Walſingham*'s Accuſation of *Eſme* Earl of *Lenox* has proceeded upon wrong Information, and is highly injurious, is not to be doubted; and that the Band of which he writes, was not for murdering the King, as he ſuppoſed, but that which was mentioned already, for the Earl of *Bothwell*'s marrying Queen *Mary*, is plain from a Letter which Sir *James Balfour* ſent to the Queen herſelf, together with a Copy of that laſt Band; which Letter is dated at *Edinburgh* the 30th of *January* 1580 [a]. 'Finding, ſays he, *Lenox*, his Favourers and Aſſiſters, willing to ſuppreſs the 'Tyranny of *Morton*, and to put the King's Majeſty in full Surety, I 'framed my Commiſſion in ſuch Sort (I truſt always nothing either differing from your Majeſty's Intention) to the King's Majeſty and him, that 'except *Morton* were reduced to ſome better order, he would be the 'wrack of them, your Majeſty, and the whole Country; and that by ſundry 'Remonſtrances made to them, had from your Majeſty's ſelf, and partly by 'other Intelligence, which I knew and learned from others. So that *Mor*'ton was ſhortly thereafter commanded to Ward in the Caſtle of *Edinburgh*, 'and thereafter to *Dumbarton*, where he is now preſently, being accuſed of 'the King, your Majeſty's umquhile Husband, his Murder, openly in Coun'cil, by Captain *James Stewart* of *Ochiltree*. Whereof Mr. *Archibald* '*Douglas* being advertiſed, by his Moyen, was with all Diligence fugitive 'in *England*, where he reſorts as yet: Wherethrough the ſaid Earl takes 'the greater Boldneſs to deny all Things promiſed by him to *Bothwell* in 'that Matter. except ſo far as the Band, whereof I did ſend the Copy to 'your Majeſty, doth teſtify. And becauſe I underſtand that ſome further 'Knowledge concerning that Matter is come to your Majeſty's Ears, there'fore muſt pray your Majeſty, moſt humbly, to write unto me, at Length, 'all that your Majeſty has heard and known therein, and that with as great 'Diligence as your Majeſty may goodly; that his wicked and impudent 'Dealing, in that Fact, may be known and manifeſted, to your Majeſty's 'Honour, the King your Son's Contentment, and Satisfaction of all good 'Men: For I have been preſſed by his Grace, and others of the Nobili'ty, your Majeſty's Favourers, to try forth the ſame, *&c.*

[a] Scots College at Paris.

All this while, the Court of *England*, much grieved at *Morton*'s Fall, ceaſed not to make Remonſtrances againſt our Author's being permitted to live in *Scotland*; and againſt *Lenox*, whom they blamed as the only Perſon who patronized him, for they bore great Hatred againſt *Lenox* alſo: And ſome of the Kirkmen and others, who were ſwayed by *Engliſh* Influence, began to echo back again their Accuſations; in ſo far that the King, to juſtify his Couſin now Duke of *Lenox*, found himſelf obliged to make a Declaration concerning Sir *James Balfour*'s Protection, which he did before his Privy Council, upon the xiii. Day of *March* 1581, or, according to the preſent Computation 1582. Sir *James* ſeems to have died the next Year 1583; for we find in the Council Book, that upon the 24th of *January* 1584, according to the *Roman* Computation, *John* Earl of *Morton*, the Prior of *Blantyre*, and *Caprinton*, in Preſence of the King's Majeſty and Lords of Secret Council, proteſted that they diſſented from the paſſing

paſſing and allowing of the Rehabilitation granted by the King's Majeſty, with Advice of his Secret Council, to the Children of umquhile Sir *James Balfour* of *Pittendreich* Knight.

ONE Step or two in his Conduct, it muſt be acknowledged, ſeem neither to admit of a full Vindication, nor good Apology. To alledge the ſuperabundant Iniquity of thoſe Times, would be but a ſorry Excuſe; and if it were admitted, the like perhaps might be pleaded for Misdemeanours in moſt Times ſince, to this Day. But although he was forfeited for having a Hand in the Murder of the King in *February* MDLXVII. there never was any Proof brought of the Fact. We ſhall not pretend directly to diſprove it; for to prove Negatives is no eaſy Matter; but there are very ſtrong Preſumptions in Sir *James*'s Favours. Had he been guilty, the Earl of *Morton*, whom he proſecuted ſo eagerly for that very Crime, and who doubtleſs knew well both the Actors and Contrivers, would not have failed to charge him with it; nor would the Court of *England* have inſiſted ſo much againſt Sir *James*, as they did, if they had really believed him to have been a Partaker in that horrid Action. They were endeavouring, as much as they could, to reſcue *Morton* from condign Puniſhment, and did effectually protect *Archibald Douglas*, who both of them were certainly guilty; and it had been incongruous in them, if at the ſame very time they ſhould have uſed their Endeavours to have one puniſhed for the ſame Crime, who had been really an Accomplice in it with the other two.

OUR Kirkmen too, who cried out againſt Sir *James*, did nevertheleſs favour the guilty Earl of *Morton*, as much as in them lay[a]. In ſhort the Queen of *England* and her Stateſmen, together with all their Tools and Aſſociates in *Scotland*, made it their conſtant Study to ſcreen and protect the Perſons who were the Murderers, and to throw the Blame upon the Innocent, and to get thoſe put to Death for it, was the main Step to attain to that Purpoſe: For why, they themſelves were the Criminals. There is no ſmall Reaſon for believing that the Murder of the King was at firſt projected at the Court of *England*. *Cecil* was well acquainted with the Method of proceeding there, for bringing about the Murder of Cardinal *Betoun*[b]. And we are ſure that the Deſign, when undertaken in *Scotland* was imparted to them[c]; and that they promoted it by abetting and ſupporting the Undertakers; and from that the Reaſons of their Conduct become very plain.

[a] See the Appendix to Crawford's Memoirs, the ſecond edit.

[b] Haynes's State Papers p. 32.

[c] See Bp. Keith's hiſt. Append. p. 164, &c.

THE laſt Years of the Author's Life ſeem to have been employed in writing, or rather completing this Book; for it is probable that he had begun to write, or to make Collections, from the Time that he was joined in the Commiſſion by the Queen for correcting the Laws. By reflecting on the many Offices in which he was inſtalled, we may form a Judgment of the high Opinion that had obtained concerning his Abilities: And by his enjoying theſe Offices, he had the beſt Opportunities that can be imagined for executing ſuch a Work in the moſt complete Manner. His Performance anſwered the general Expectation concerning it, and continued to be uſed and conſulted both

both by Students and Practitioners, as the beſt of our Law-books, till near a hundred Years after his Deceaſe, that the Lord *Stair*'s Inſtitutions were publiſhed; which, by being ſet forth in Print, were more readily to be got, and more eaſily read than written Books: However this Book always continued to be in great Eſteem; and as I have been told, ſtill continues to be in as high Repute with all thoſe who ſet themſelves to pry more narrowly into the Grounds and ancient Practice of the Law of *Scotland*.

Tis hard to account how it came to paſs, that a Book of ſo great Value, and ſo general Uſe, was not printed; only it is certain that there had not been many Books, on the Law of *Scotland*, put to the Preſs before Lord *Stair*'s Inſtitutions were publiſhed. King *James* V. had cauſed print the Acts of his two laſt Parliaments, of which ſome Copies are ſtill to be ſeen on Vellum. Queen *Mary* cauſed publiſh the whole Acts from the xix. of King *James* I. to the Year 1566, which were continued from Time to Time, through the Reign of King *James* VI. The Books called *Regiam Majeſtatem*, and ſome other Acts and Books, which commonly accompany them, were printed by Sir *John Skene*, *A. D.* Mdcix. and beſides theſe we had few or none others publiſhed, till Sir *George Mackenzie* began to write ſome Treatiſes, after the Reſtoration; for Mr. *Craig*'s Book *De feudis* cannot, in a ſtrict form of Speech, be called a Book of *Scottiſh* Law; neither had it as yet been printed in our Country, but only in *England*.

By ſome late Statutes, many Laws and Cuſtoms, handled here at large, are now aboliſhed; yet even as to them, it will give ſome Satisfaction to ſee how Matters proceeded formerly; and Poſterity will be the more enabled to form a Judgment how far better, and how much longer, they ſhall happen to be governed by theſe later Conſtitutions, than our Forefathers had been under the old ones.

David Hume of *Godſcroft* writes, in his Hiſtory of the *Douglaſſes* [a], "That *James* Earl of *Morton*, while Regent, ſet on Foot a great good "Work, and would, no Queſtion, have ſeen it perfected, if he had brooked his Regency a while longer, which was the reducing of our Laws into a more eaſy Form and Method than they were before. The Care of this, ſays he, was committed to, and the Task laid upon Sir *James* "*Balfour*, and Mr. *John Skene*, Clerk Regiſter and Maſter of the Rolls. "The Work, as I am informed, continues he, was well advanced; but "when he quit his Authority, they left off any further Proceeding in "it."

[a] P. 358.

There is indeed a Commiſſion by *Morton*'s Privy Council, dated at *Holy-rood-houſe*, 5th *March* 1574, to divers Perſons, for reviſing the Laws and whole Books thereof, as well Acts of Parliament as Deciſions of the Court of Seſſion, and to draw up a perfect Form of the Body of the Law, that it might be reported to Parliament, as a perfect written Law, by which the Leiges might be judged. But in the Copy of that Commiſſion which I have, there is

no

no Mention either of Sir *James Balfour*, or of Mr. *John Skene*, among the Commiſſioners; nor could it be expected, for the former was in a Kind of Exile; and the latter was not admitted as an Advocate till the 9th Day of *March* 1574.

THERE had been Acts and Commiſſions for this or the like Purpoſe, in almoſt every one of the ſix preceeding Reigns, and particularly in the Reign of King *James* III [a], but as none of them had taken Effect, ſo neither did *Morton*'s Commiſſion: For in *July* 1578, there are Commiſſioners appointed for reviſing and conſidering the old Laws, *&c.* in the firſt Parliament which was holden by King *James* VI. in Perſon, after *Morton* was turned out of the Regency. But it ſeems there was nothing done in the Matter; at leaſt we find nothing of that Nature executed, till this Book was written, which is not the Work of a Number of Commiſſioners, but of one Perſon, as appears by his ſpeaking of himſelf now and then in the firſt Perſon of the ſingular Number.

[a] Act Parl. An: 1478. cap. 115.

IN it are digeſted under proper Heads, or Titles, the Acts of Parliament, from the XIX. Year of King *James* I. the Books of the *Regiam Majeſtatem*, with the Statutes of our Kings before *James* I. and divers other Law-treatiſes that are found in the Manuſcript Copies to accompany the *Regiam Majeſtatem*; as alſo the Deciſions of the Court of Seſſion, as well before as after its more fixed and regular Conſtitution in the Reign of King *James* V.

AS to the Acts of Parliament, they are cited according to the firſt Edition, commonly called the *Black Acts*, in the Publication of which Sir *James* himſelf had been concerned. But becauſe Copies of that Edition are now more rarely to be purchaſed, and becauſe the Acts are numbred in a very different Manner in the later Editions, ſome People were of Opinion, that for their greater Conveniency, all the Citations ſhould be adapted to the modern Copies; while others thought it ſomewhat incongruous, to make a Man refer to the Edition of a Book, which did not appear till a hundred Years after he was dead; nor could that have been done in many Inſtances, becauſe there are not a few Acts in the firſt Edition that are wholly omitted in the latter. To remove this Difficulty as well as we could, there is here ſubjoined a comparative Table of theſe Editions. The Acts of Parliament are always cited after this Manner, *Ja.* I. *fol.* 7. *Act* 43. 12 *Martii* 1424.

IT was purpoſed in like Manner to have drawn up a comparative Table betwixt the Numbers of the Rubricks, or Chapters, of the Books of *Regiam Majeſtatem*, and other Collections of old Laws, as they ſtand differently in the printed and written Copies: But this was found almoſt impracticable: For beſides that there are a good Number of Treatiſes, and ſome of them pretty large, in the Manuſcripts which are not printed, there are not ſo many Rubricks in the printed as in the written Copies; and theſe not only differ

from the others, but alſo among themſelves, both as to the Diviſion of the Books, and of the Chapters, which muſt neceſſarily perplex the Matter; ſo that ſuch a Table could anſwer only to one or two Manuſcripts. The Author had frequently obſerved this Difference, which obliged him to refer to particular Copies, ſuch as *lib.* Carneg. Ersk. Galbraith. Kintor. Purves, Scon. and *liber meus* [a], which I ſuppoſe is the ſame which he elſewhere calls *lib. Balf.* [b].

[a] P. 60, 61. 433.
[b] P. 589.

The Difficulty in finding in the printed Copy, ſo far as it extends, any Quotation from the Manuſcript, is pretty much removed by Sir *John Skene*'s large Index. Theſe Books of *Regiam Majeſtatem* are by our Author cited abſolutely, thus, *Lib.* 1. or 2. *cap.* 10. There are ſome Citations [c] marked, *R. M.* which are not to be found in any of the four Books themſelves, but among the Collection of Statutes and Law Treatiſes, commonly ſubjoined to them: The reſt of which are either quoted by the initial Words, as *Quon. attach. c.* 5. i. e. *Quoniam Attachiamenta*, cap. 5. called alſo *Leges Baronum:* or by their proper Titles, as, *de judic.* i. e. *Liber de judicibus.* Tract. coron. i. e. *Tractatus coronæ*, &c.

[c] As p. 208.

THE Deciſions of the Court of Seſſion make a very conſiderable Part of the Book. Theſe had been entred in two large Volumes, which are cited ſometimes by the Appellation of *Regiſters* [d], but for the moſt part very briefly, *Tome firſt* or *ſecond*, with the Number of the Deciſion, the Names of the Parties, and the Date. The Stile in which theſe Deciſions are entred, is both conciſe and perſpicuous, and the *ratio decidendi* for the moſt Part extremely plain and ſatisfactory.

[d] P, 102. 113. &c.

THE firſt Deciſion in the firſt Volume, is upon the xvii. Day of *May* 1469 [e]. But there have been others, long before that in Time, in other Parts of the Book, as in Page 24th there is one upon the 24th *September* 1451, more than ſix Years before the Act of King *James* II. by which Nine Perſons, three out of each of the three Eſtates, and the Clerk Regiſter, were appointed for holding the Seſſion yearly, at the Towns of *Edinburgh*, *Perth* and *Aberdeen*, Forty Days at each of them. This Deciſion ſeems to be erroneouſly marked in the 24th Page, as being in the ſecond Volume; for it occurs again, Page 216. Line 25. where it is ſaid to be in the firſt Volume. In the 217th Page, there is a Deciſion the xiii. Day of *July* 1420, given in a general Synod holden at *Perth:* Nor is there any Miſtake in the Date, for the ſame occurs again, Page 219. But in both Places it is noted as in the ſecond Volume, although it is more probable that it really was in the firſt Volume.

[e] P. 153,

IT doth not appear clearly that there had been any Deciſions here noted later than the Beginning of the Year MDLXXIX. and perhaps the Regiſter had not then been continued any further: For although in Page 400 there is one noted 23d *July* 1580, yet by its Place in the Regiſter, it would ſeem to be an Error for 1480. In the vaſt Number of Citations and Dates, many ſuch Errors have crept in, while through the numerous Tranſcripts

Tranſcripts that had been made of this uſeful Book, the Errors in the former, as uſually happens, were all copied in the later, and new ones ſuperadded. Thus, Page 181. Line 20. we read 1458 for 1558; and by a contrary Error, Page 147, Line 9. 1594 for 1494, and, Page 178, Line 19th 1592 for 1492. Theſe Regiſters of Deciſions could not be found; nor were we ſo fortunate as to find the Author's original Copy, by which ſuch Errors might have been amended. If any other Perſon ſhall afterwards meet with them, we ſhall be ready to congratulate him on Account of his better Luck; and we hope his Candor will prompt him to believe that we ſtudied to give this Edition as correct as we were enabled to do, by conſulting all the Manuſcript Copies we could find. Some literal Errors have eſcaped, ſuch as on the Margin of Page 208, *locatia* for *locatio*; but theſe are both very few, and of ſmall Conſequence.

At the End of the Book, in one Copy we found a Treatiſe, *De verborum ſignificatione*; but the whole Leaves of it were torn: However it appeared plainly that it had been almoſt the ſame with that publiſhed by Sir *John Skene*, only Sir *John*'s Explanations are not always ſo conciſe as thoſe in that Manuſcript, by which ſome have been induced to think that Sir *James Balfour* had been the Author, and Sir *John Skene* only the Publiſher of that Treatiſe; but then it is not eaſy to account for what is ſaid in Sir *John*'s Preface; for it can hardly be thought that he could have expreſſed himſelf as he doth, if he had been publiſhing a Book which was known to be the Work of another Man. But I leave the Determination of this Matter to thoſe who have better Opportunities of inquiring. After the Treatiſe was to be had in Print, the Tranſcribers, it would ſeem, did no longer find their Account in copying it at the End of our Author's Book, as formerly had been the Practice.

A comparative Table of the Acts of Parliament, as they are numbered in the first Edition, A. D. 1566, *and in the Edition by* Murray *of* Glendook, A. D. 1681.

King James I.		35	36	37	38	39	40	41	42	43	44	45	46
Parl. I. 26. *May* 1424.													
1st Edit.	*last Ed.*												
C. 1	1												
2	2												
3	3												
4	4												
5	5												
6	6												
7	7												
8	8												
9	9												
10	0												
11	0												
12	10												
13	11												
14	12												
15	13												
16	14												
17	15												
18	16												
19	17												
20	18												
21	19												
22	20												
23	21												
24	22												
25	23												
26	24												
27	25												
28	0												
Parl. II.													
12. *Mart.* 1424.													
29	26												
30	27												
31	28												
32	29												
33	30												
34	31												

32	74	0	106	96
33	75	0	107	97
34	76	66	108	98
35	77	67	109	99
36			110	100
37	*Parl.* IV.			
38	12. *May* 1426.		*Parl.* VII.	
39			1. *March* 1427.	
0	78	68		
40	79	69	111	101
41	80	70	112	102
42	81	71	113	103
43	82	72	114	104
44	83	73	115	105
45	84	74	116	0
46	85	75	117	0
			118	106
Parl. III.	*Parl.* V.		119	107
	30. *Sept.* 1426.		120	0
11. *March* 1425.			121	108
	86	76	122	109
51	0	87	77	
52	47	88	78	*Parl.* VIII.
53	48	89	79	12. *July* 1428.
54	0	90	80	
55	49	91	81	C. 123 110
56	50	92	82	124 111
57	51			125 0
58	52	*Parl.* VI.		
59	53	1. *July* 1427.		*Parl.* IX.
60	54, 55			6. *March* 1429.
61	56	93	83	
62	0	94	84	126 112
63	0	95	85	127 113
64	57	96	86	128 114
65	58	97	87	129 115
66	59	98	88	130 116
67	60	99	89	131 117
68	61	100	90	132 118
69	62	101	91	133 119
70	63	102	92	134 120
71	64	103	93	135 121
72	65	104	94	136 122
73	0	105	95	137 123

137	123
138	124
139	125
140	126
141	127
142	128
143	129
144	130
145	131
Parl. X.	
15. *October* 1431.	
146	0
147	132
148	133
Parl. XI.	
1. *March* 1433.	
149	134
150	0
Parl. XII.	
10. *January* 1434.	
151	135
153	136
154	137
155	138
156	139
157	140
158	141
159	142
160	143
161	144
162	145
163	146
164	147
165	148
166	149
King JAMES II.	
Parl. II.	
20. *March* 1437.	
C. 1	1
2	2
Parl. II.	
13. *March* 1438.	
3	0
4	3
Parl. III.	
2. *August* 1440.	
N.	4
5	5
6	6
Parl. IV.	
4. *Novemb.* 1443.	
7	7
8	0
Parl. V.	
20. *January* 1449.	
9	8
10	9
11	10
Parl. VI.	
19. *January* 1449.	
12	11
13	12
14	13 & 14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	0
23	22
24	23
25	24
26	25
27	26
28	27
29	0
30	28
31	29
Parl. VII.	
4. *May* 1450.	
32	30
33	31
Parl. VIII.	
25. *October* 1451.	
34	32, 33
35	34
36	35
37	36
38	0
Parl. IX.	
26. *August* 1452.	
N.	37
39	38
40	39
Parl. X.	
16. *July* 1454.	
41	0
42	40
Parl. 9. *July* 1455.	
Parl. XI.	
4. *August* 1455.	
43	41
44	0
45	42
46	43
47	44
48	0
49	45
50	46
51	0
52	47
Parl. XII.	
13. *October* 1455.	
53	48
54	49
55	50
56	51
57	52
58	53
59	54
60	0
61	55
Parl. XIII.	
19. *October* 1456.	
62	56
63	57
64	58
65	0
66	59
67	60
Parl. XIV.	
6. *March* 1457.	
68	0
69	61
70	62, 63
71	64
72	0
73	65
74	66
75	67
76	68
77	69
78	70
79	71
80	72
81	0
82	73
83	74
84	0
85	75
86	0
87	76
88	77
89	78
90	79
91	80
92	81
93	82
94	83, 84
95	84
96	85
97	86
98	87
99	88
100	0
101	0
102	89
King JAMES III.	
Parl. I.	
9, *October* 1466.	
C. 1	1
2	0
3	2
4	3
5	4
6	5
7	6
8	0
9	7
10	8
11	0
12	9
13	10
Parl. II.	
31. *January* 1466.	
14	11
15	12
16	13
17	14
18	15
19	16
20	0
21	17

Parl. III.
12. *October* 1467.

22 18
23 19
24 20
25 21

Parl. IV.
12. *January* 1467.

26 22
27 0
28 23
29 24
30 0
31 25
32 0
33 0

Parl. V.
20. *Novem.* 1469.

0 26
34 27
35 28
36 29
37 30
38 31
39 32
40 33
41 34
42 35
43 36
44 37
45 38
46 39
47 0
48 0
49 0
50 40
51 41

Parl. VI.
6. *May* 1471.

52 42
53 43
54 44
55 0
56 45
57 46
58 47
59 48
60 49
61 50

Parl. VII.
9. *May* 1474.

62 0
63 51
64 52
65 53
66 54
67 55
68 56
69 0
70 57
71 58
72 59
73 60
74 61
75 62

Parl. VIII.
20. *Novem.* 1475.

76 0
77 63
78 64
79 0
80 65
81 66
82 67
83 68
84 69
85 70

Parl. IX.
12. *July* 1476.

86 71
87 72

Parl. X.
6. *August* 1477.

88 0
89 0
90 0
91 73
92 74
93 75
94 76
95 77
96 78
97 79
0 80

Parl. IX.
6. *April* 1481.

N.——— 0
98 81
99 82
100 0
100 83
101 83
102 0
103 85
104 86
105 0

Parl. XII.
11. *Decem.* 1482.

0 87
0 88
0 89

Parl. XIII.
24. *Febr.* 1483.

106 90
N. 91
N. 92
107 0
108 93
109 0
110 94
111 0
112 95
113 96
114 97
115 0

Parl. XIV.
1. *October* 1487.

116 0
117 0
118 98
119 99
120 100
121 101
122 102, 103
123 104
124 105
125 0
126 0
127 106
128 107
129 108
130 109
131 110
132 111
133 0
134 0
0 112
0 113
0 114
0 115

King JAMES IV.

Parl. I.
6. *October* 1488.

C 1 *&c.* 0
9 1
10 2
11 3
12 0
13 4
14 *&c.* 0
17 5
18 6

Parl. II.
15. *Febr.* 1489.

N. 7
19 0
20 8
21 9
22 0
23 0
24 10
25 0
26 11
27 0
28 12
29 13
30 14
31 0
32 15
33 16
34 17
35 18
36 19
37 20
38 21
39 0
40 0
41 22
42 0

Parl. III.
18. *May* 1491.

43 0
44 23
45 0
46 0
47 24, 25
48 26
49 27
50 28
51 29
52 30
53 31, 32
54 0

55 33
56 0
57 34
58 35
59 36
60 0
61 37

Parl. IV.
26. *June* 1493.

62, 63 0
64 38
65 &c. 0
70 39
71 40
72 0
73 41
74 42
75 43
76 44
77 45
78 46, 47
79 48
80 0
81 49
82 50
83 51
84 52

Parl. V.
13. *June* 1494.

85 0
86 53
87 54
88 55
89 56
90 57

Parl. VI.
11. *March* 1503.

91 0
92 58
93 59
94 60
95 61
96 62
97 63
98 64
99 65
100 66
101 67
102 68
103 69
104 70
105 0
106 71
107 72
108 73
109 74
110 75
111 76
112 77
113 78
114 79
115 80
116 81
117 82
118 83
119 84
120 85
121 N. 0
122 87
123 88
124 89
125 90
126 91
127 92
128 93
129 94
130 95
131 96
132 0
133 97
134 98
135 99
N. 100

Parl. VII.
12. *May* 1509.

136 0
137 101
138 102

King JAME V.

Parl. I.
12. *July* 1515.

C. 1 1
2 2

Parl. II.
24 *July* 1522.

3 3
4 4

Parl. III.
22 *January* 1528.

0 5
0 6
0 7
0 8

Parl. IV.
17. *May* 1532.

6 36, 68

Parl. V.
7. *June* 1535.

7 0
9 9
10 10
11 11
12 12
13 13
14 0
15 14
16 15
17 16
18 17
19 0
20 18
21 19
22 20
23 21
24 22
25 23
26 0
27 24
28 25
29 26
30 27
31 28
32 29
33 30
34 31
35 32
36 33, 4, 5
37 s 36

Parl. VI.
Decem. 1540.

38 69
39 0
40 70
41 71
42 72
43 73
44 74
45 75
46 76
47 77
48 78
49 79
50 80
51 81
52 82
53 83
54 84
55 85
56 86
57 87
58 88
59 89
60 90
61 91
62 92

Parl. VII.
14. *March* 1540.

N. 93
73 94
74 95
75 96
76 97
77 0
78 98
79 99
80 100
81 101
82 102
83 103
84 104
85 105
86 106
87 0
88 107
89 108
90 109
91 110
92 111
93 112
94 113
95 114
96 115
97 116
98 117
99 118
100 119
101 120
102 0
103 121
104 122
105 123
106 124
107 125
0 126
108 127

Queen MARY.

Parl. I.
13. *March* 1542.

C. 1 1

Parl. II.
5. *Decemb.* 1543.

2 2

Parl. III.
4. *Auguſt* 1546.

3	3
4	0
5	4
N.	5
N.	6
6	7

Parl. IV.
29. *May* 1551.

7	8
8	9
9	10

Parl. V.
1. *Febr.* 1551.

10	11
11	12
12	13
13	14
14	15
15	0
16	16
17	17
18	18
19	0
20	19
21	20
22	0
23	21
24	0
25	0
26	22
27	23
28	24
29	0
30	0
31	25
32 *&c.*	0
35	27
36 *&c.*	0

Parl. VI.
20. *June* 1555.

N.	28
1	0
2	29
3	30
4	31
5	32
6	33
7	34
8	35
9	36
10	37
11	38
12	39
13	0
14	40
15	41
16	42
17	43
18	44
19	45
20	0
21	46
22	47
23	48
24	49
25	51
26	52
27	53
28	54
29	55
30 *&c.*	0
34	56
35	57
36	58
37	59
38	0
39	60
40	61

Parl. VII.
14. *Decem*, 1557.

1; 2, 3	0
4	62
5	63
6	66

Parl. VIII.
29. *Novem.* 1558.

0	65
0	66

Parl. IX.
4. *June* 1563.

1	67
2	68
3	69
4	70
5	0
6	71
7	72
8	73
9	74
10	75
11	76
12	77
13	0
14	0
15	78; 79
16	80
17	81
18	82
19	83
20	84
21	85
22	86
23 *&c.*	0

Parl. X.
14 *Decem.* 1564.

1	87
2	88

King JAMES VI.

Parl. I.
15. *Decem.* 1567.

C. 1	0
2	1
3	2
4	3
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	0
13	12
14	13
15	14
16	15
17	16
18 *&c.*	0
21	17
22	18
23	18
24	19
25	0
26	20
27	21
28	22
29	0
30	23
31	24
32	25
33	26
34	27
35	0
36	28
37	29
38	30
39	31
40	32
41	33

Parl. II.
28. *Auguſt* 1571.

1	34
2	35
3	36
4	37
5	38
6	0
7	39
8	40
9, 10	0
11	41
12	42
13	43

Parl. III.
26. *January* 1572.

1	44
2	45
3	46
4	47
5	48
6	0
7	49
8	50
9	51
10	52
11	53
12	54

Parl. IV.
30. *April* 1573.

1	55
2	0
3	56
4	57
5	58
6	59
7	60

Parl. V.
25. *July.* 1578.

1	61
2	62
3	63
4	64
5	65
6	66
7	67

8	0	5	72	15	81	25	91	
		6	73	16	82	26 &c.	0	
Parl. VI.		7	74	17	83	29	92	
		8	75	18	84	30	93	
20. *October* 1579.		9	75	19	85	31	94	
		10	0	20	86	32	96	
1	68	11	77	21	87	33	97	
2	69	12	78	22	88	34	98	
3	70	13	79	23	89	&c.		
4	71	14	80	24	0			

Of the LAW.

THE law is devydit in thré partis; in the law of nature, in the law of God, and in the positive law. The natural law is that quhilk is written be the finger of God, or of nature, in the heart of man, and quhilk nature hes gevin and ingenerat in all leiving creaturis: the law of God is that quhilk is reveillit, and declarit in his maist halie will and word; the law positive is this quhilk is made be man allanerlie. *De maritag. cap.* 3. *Stat. Will. cap.* 29. *De judic. cap.* 2.

CHAP. I. The division of the law.

IN the name of the halie and indivisible Trinitie, the Father, the Sonne, and the Halie Ghoist, *Amen*. *Robert*, be the grace of God, King of *Scottis*, in the threttene zeir of of his regne, on the *Sonday* eftir the feist of Saint *Androw* the Apostle, sittand at *Scone*, in his plane parliament thair halden, with solemne consent and avise of Bischoppis, Abbotis, Priouris, Erlis, Baronis, and Communiteis of this realme thair convenit; touching divers and difficill affairis, concerning his grace, and his realme, baith for the present and for the time cuming, to the honour of God, and his halie kirk, and to the amendement of his realme, and defence of his liegis, and to the mantenance and establishing of peace within the same, with commoun counsel, and expres consent of all Prelatis, Erlis, Baronis, Friehalders, and Communiteis foirsaid, maid, constitute, and ordanit, divers and sindrie lawis, statutis, and ordinances, to be perpetuallie and inviolablie keipit and observit within his haill realme. *Stat.* 2. *Roberti Bruce, in prin.*

C. II. Be quhom, and to what end lawis are maid.

GIF any questioun sall happin to arvse before any jugeis of this realme, quhilk cannot be decydit, be no cleir writtin law, the decisioun and declaratioun thairof aucht and sould be referrit and continewit unto the nixt parliament, that an law may be cleirlie maid be the Lordis of the said parliament, how the said questioun, and all uther materis siclike, sould be decydit and reullit in time to cum; and to that effect, the saidis parteis sould be wairnit to compeir in the foirsaid parliament, becaus na jugeis within this realme hes

C. III. The three estatis allanerlie may mak lawis.

powar to mak any lawis or ſtatutis, except the parliament allanerlie. 17. *Martii*, 1469. *Alexander Hepburne* of *Quhitſum*, contra *George Haliburtoun. pri. tom. c. 5.*

C. IV. Of publicatioun and obſervatioun of the lawis.

ROBERT be the grace of God, King of *Scottis*, to his Juſticis, Schireffis, Proveſtis, and thair Balleis, and to all and ſindrie his faithfull Liegis to quhais knawlege thir preſent letteris ſall cum, greeting; Wit ze, that we, with counſell and expres conſent of our Biſchoppis, Abbotis, Priouris, Erlis, Baronis, and haill Communiteis of our realme, in plane parliament, halden at *Scone*, the *Sonday* nixt following the feiſt of Saint *Androw* the Apoſtle, and the threttene zeir of our regne, hes, be our royal authoritie, maid, ratifiet and approvin, divers and ſindrie lawis and conſtitutionis. Quhairfore we ſtraitlie charge zou, and commandis, that ze, within zour juriſdictioun, in zour courtis hereftir to be haldin, and all uther places quhair our leigis happinis to convene, cauſe the ſamyn our ſtatutis and ordinancis to be publictlie red and proclamit, and inviolablie in all pointis keipit and obſervit, als weill in courtis of Prelatis, Erlis, Baronis, and of all uther havand powar to hald court, as in our awin proper courtis; to whom our will is, that ze give ane autentique copie of the ſamin ſtatutis and lawis, to the effect that thay, nor nane of thame, pretend na ignorance thairof, in any tymes cuming. *Stat.* 1. *Roberti Bruce, cap.* 29.

C. V. That all the actis be copyit fra the Clerk of regiſter, and proclamit.

ITEM, The Lordis thinkis ſpeidful, that our ſoverane Lord command all his Schireffis, and Commiſſioneris of burrowis, to cum to the Clerk of the regiſter, and gar copie all the actis, articlis and ſtatutis of parliament, and gar proclame thame oppinlie throuchout thair ſchyres and burrowis, ſwa that nane of his liegis alledge ignorance of thame in tyme to cum; and als that the ſaidis actis and ordinancis, the quhilkis are neceſſare, till his Baronis and Freehalderis be ſchawin at thair *Whitſoundayis* making, or thair baroun courtis richtſwa to be takin and copyit, and ſchawin to thair tenentis: Swa that nouther the friehalderis nor tenentis pretermit the obſerving of the ſaidis decreitis, and that the panes ſet thairon be dewlie raiſit, that the ſaidis actis and decreitis may be dewlie obſervit as effeiris. *Ja.* 2. *act.* 102. *fol*, 45. 6 *Mar.* 1457.

C. VI. Quhom be the actis of parliament ſould be proclamit.

ITEM, It is ſtatute and ordanit, that all Schireffis, Baillies, and Proveſtis of burrowis, tak the copie of thir actis and ſtatutis, for the fulfilling of the ſamin, and to mak thame be oppinlie proclamit within thair boundis, under the pane of the unlaw of the parliament to be raiſit upoun thame. *Ja.* 4. *act.* 60. *fol.* 93. 18 *Maii*, 1491.

ITEM, The King, with conſent of the thré eſtatis of the realme, hes ordanit, that all ſtatutis and ordinancis of this parliament, and of the twa parliamentis preceidand, be regiſtrat in the Kingis regiſter, and gevin to the Schireffis. Quhilkis ſtatutis and ordinancis, ilk Schireff ſall be haldin to publiſh oppinlie in the chief place of the ſchirefdome, and utheris notable placis, and als to give the copeis of thame baith to Prelatis, Baronis, and burrowis of his bailliarie, upoun the expenſis of the askeris; and that ilk Schireff

reff gar be keipit the tenoure of this act, under the pane of deprivatioun of his office; and that ilk Schireff give opin bidding to the people of his bailliarie, baith to land and to burgh, to keip and fulfill all ſtatutis and ordinances maid in the ſaidis thré parliamentis, under the pane contenit in the actis of thame; ſwa that nane have cauſe till pretend or allege any ignorance. *Ja.* I. *act.* 77. *fol.* 11. 11 *Mart.* 1425.

C. VII. Actis of parliament be and publiſhit, hes the ſtrenth of law.

ACTIS and ſtatutis maid be the thré eſtatis in parliament bindis and obligis all the liegis of this realme, and hes the ſtrenth of ane law and ordinance eftir the firſt publicatioun thairof in parliament maid, albeit lang thaireftir thay be imprentit. 15. *Febr.* 1542. *Home* contra *Home.* 2 *t. c.* 133.

C. VIII. That the actis of parliament ſould be imprentit.

HEIR our ſoverane Lord hes ordanit, that the actis of parliament maid be his hienes be publiſt out throw all his realme: and that all Schireffis, Stewartis, Baillies, Proveſtis, and Baillies of burrowis, and utheris his liegis, may have the copyis thairof, and pretend na ignorance throw miſknawing of the ſamin; hes ordanit his Clerk of regiſter to mak an autentique extract and copie of all the ſaidis actis, ſa far as concernis the commoun weill, under his ſubſcriptioun manual, to be imprentit be quhat Prenter it ſall pleaſe the ſaid Clerk of regiſter to chois. And it ſall not be leſum to any uther Prenter to imprent the ſamin within this realme, or without the ſamin, or bring hame to be ſauld for the ſpace of ſax zeiris nixt to cum, under the pane of confiſcatioun of the ſamin. Provyding alwayis that the ſaid Prenter to be choſin be the ſaid Clerk of regiſter, as ſaid is, have our ſaid ſoverane Lordis ſpeciall licence thairto. *Ja.* V. *act.* 108. *fol.* 142. 14 *Mart.* 1540. *Ja.* VI. *reg. pri. act.* 40. *fol.* 22. 15 *Decemb.* 1567.

C. IX. That nane interpret the Kingis ſtatutis.

ITEM, The King, of deliverance of counſel be maner of ſtatute, forbiddis that na man interpret his ſtatutis utherwayis than the ſtatutis beiris, and to the intent and effect that thay war maid for, and as the maker of them underſtude; and quha ſa dois the contrarie ſall be puniſt at the Kingis will. *Ja.* I. *act.* 121. *fol.* 19. 1 *Mart.* 1427.

C. X. Anent the execution of the actis and ſtatutis.

AND attour, ſen God of his grace hes ſend our ſoverane Lord ſic progreſſis and proſperitie, that all his rebellis and brekaris of his juſtice ar removit out of this realme, and na maiſterful partie remanand, that may cauſe ony breking within his realme, ſwa that his hienes be inclynit in himſelf, and his miniſteris, to the quyet and commoun proffeit of the realme, juſtice and equitie to be keipit amang his liegis; his thré eſtatis maiſt humblie exhortis and requiris his hienes to be inclynit with ſic diligence to the executioun of the ſtatutis, actis and decretis, that God may be pleaſit with him, and all his liegis ſpirituall and temporall, and pray till God for him, and give thanking to him that ſend thame ſic ane Prince to thair governor and defender. *Ja.* II. *act.* 102. *fol.* 45. 6 *Mart.* 1457.

C. XI. Anent the brekaris of the actis of parliament.

ITEM, That it be inquirit be the Kingis miniſteris, gif the ſtatutis maid in his parliament be keipit, and gif thay be brokin in ony

ony of thair punctis, that the brekaris of thame be puniſt eftir the forme and ordinance of the parliament. *Ja.* I. *act.* 32. *fol.* 6. 12 *Mart.* 1424.

C. XII. That all the Kingis liegis leive and be governit be the lawis of the realme.

ITEM, It is ordanit be the King, be conſent and deliverance of the thré eſtatis, that all and ſindrie the Kingis liegis of the realme leive and be governit under the Kingis lawis and ſtatutis of the realme allanerlie, and under na particular lawis, na ſpecial privilege, na be na lawis of uther countreis nor realmes. *Ja.* I. *act.* 53. *fol.* 8. 11 *Mart.* 1425.

ITEM, It is ſtatute and ordanit, that all our ſoverane Lordis liegis, beand under his obeyſance, and in ſpecial the Ilis, be reullit be our ſoverane Lordis awin lawis, and the commoun lawis of the realme, and be nane uther lawis. *Ja.* IV. *act.* 114. *fol.* 106. 11 *Mart.* 1503.

Of the KING: and firſt of his coronatioun.

C. I. Anent the dimiſſioun of the croun in favouris of our ſoverane Lord, and his M. Coronatioun.

ITEM, It is fundin and declarit be the thré eſtatis of this preſent parliament, that the dimiſſioun and over-geving of the crown and regiment of this realme, maid be the Quenis grace, our ſoverane Lordis derreſt mother, be vertew of hir letters of commiſſioun and procuratioun, ſubſcrivit with her hand, and under hir privie ſeill, of the dait the twenty foure day of *Julij* laſt bypaſt, was, is, and ſall be in all tymes cuming, haldin, repute, and eſtemit lauchfull and perfyte, according to the ſamin commiſſioun producit, aviſit and admittit be the ſaidis thré eſtatis; and als, that the coronatioun and inauguratioun of our ſaid ſoverane Lord, ſone to his ſaid derreſt Mother, and native Prince of this realme, maid and ſolemnizat, conforme to the ſaid commiſſioun, at *Striviling* the twentie-nine day of the ſaid moneth of *Julij*, be the Erlis, Lordis, Prelatis, Commiſſionaris of burrowis, Baronis and utheris, faithfull and trew ſubjectis, aſſemblit and convenit for that effect, wes dewlie, richtlie and ordourlie done and execute, and als lauchful and vailzeabill in the ſelf in all reſpectis, and his majeſtie als richteouſlie inveſtit and poſſeſt in this kingdome as his ſaid mother, his guidſir, granſchir, or ony uther his maiſt noble progenitouris, native Princes of this realme, wer, and hes bene of before, or as gif her grace, the tyme of the ſaid coronatioun, had bene departit out of this mortall lyfe, or had comperit perſonallie, in preſence of the haill thré eſtatis of this realme aſſemblit in parliament, and maid the ſaid dimiſſioun; notwithſtanding ony manner of title, actioun or entres, or ony uther thing that preſentlie may or can heireftir be objectit in the contrare: And als ratifyis, apprevis, and confirmis the ſaid dimiſſioun, coronatioun and inauguratioun of our ſaid ſoverane Lord, and all thingis done, or that heireftir ſall happin to be done in his hienes name and authoritie; of the quhilkis letteris of dimiſſioun and conſtitutioun of procuratioun the tenouris followis:

MARIE, be the grace of God, Quene of *Scottis*, To all and ſindrie

ſindrie our jugeis and miniſteris of law, liegis and ſubjectis quhome it effeiris, to quhais knawlege thir our letteris ſall cum, greiting: Forſamekle as be lang, irkſum and tedious travell takin be us in the governament of this our realme, and liegis thairof, we ar ſa vexit and weryit, that our bodie, ſpirite and ſenſis ar altogidder become unhabill langer to travel in that rowme; and thairfore we have dimittit and renuncit the office of governament of this our realme, and liegis thairof, in favouris of our onlie maiſt deir ſone, native Prince of this our realme; and becaus of his tender zouth and inhabilitie to uſe the ſaid governament in his awin perſoun during his minoritie, we have conſtitute our derreſt brother *James* Erle of *Murray*, Lord *Abernethie*, Regent to our ſaid ſone, realme and liegis foirſaidis: And, in reſpect that our ſaid derreſt brother is actuallie furth of our realme, and cannot inſtantlie be preſent to accept the ſaid office of regentrie upoun him, and uſe and exerce the ſamin during our ſaid derreſt ſonis minoritie; we, quhill his returning within our realme, or in cais of his deceis, have maid, conſtitute, namit, appointit and ordanit, and be thir our letteris makis, conſtitutis, namis, appointis and ordanis our traiſt couſingis and counſallouris, *James* Duke of *Chatellerault*, Erle of *Arrane*, Lord *Hamiltoun*, *&c.* *Matthew* Erle of *Levinax*, Lord *Dernley*, *&c.* *Archibald* Erle of *Argyle*, Lord *Campbell*, and *Lorne*, *&c.* *Johne* Erle of *Athole*, *James* Erle of *Mortoun*, *Alexander* Erle of *Glencarne*, and *Johne* Erle of *Mar*, Regentis to our ſaid derreſt ſone, realme and liegis. And in cais our ſaid brother, *James* Erle of *Murray*, cum within our realme, and refuſis to accept the ſaid office of regentrie upon his ſingular perſoun; we mak, conſtitute, name, appoint, and ordeine ourt raiſt couſingis and counſallouris foirſaidis, and our ſaid brother, Regentis of our ſaid deir ſone, realme and liegis; Gevand, grantand, and commitand to thame, or any fyve of thame, conjunctlie, full powar for our ſaid ſone, and in his name, to reſſave reſignatiounis of landis, mak diſpoſitiounis of wairdis, non-entreſſis, relevis, mariagis, benefices, eſchetis, officis, and utheris caſualiteis and privilegis quhatſumevir concerning the ſaid office, ſignatouris thairupoun, to mak, ſubſcryve, and caus be paſt throuch the ſeillis; and to uſe and exerce the ſaid office of regentrie in all thingis, privilegeis and commoditeis, ſiclike, als frelie, and with als great libertie as ony Regent or Governour to us, or our predeceſſouris, uſit the ſamin in ony tymes bygane: Promittand to hald firme and ſtabill in the word and faith of an Prince, to quhatſumevir thingis our ſaid traiſt couſingis dois in the premiſſis: Chairging heirfore zou, all and ſindrie our jugeis and miniſteris of law, liegis and ſubjectis foirſaidis, to anſwer and obey to our ſaidis traiſt couſingis, Regentis foirſaidis, in all and ſindrie thingis concerning the ſaid office of regentrie, during our ſaid derreſt ſonis minoritie, and ay and quhill he be of the age of ſevintene zeirs compleit, as ze and ilk ane of zow will declair zow luiſing ſubjectis to our ſaid maiſt deir ſone zour native Prince, and under all paine, charge and offence, that ze, and ilk ane of zow, may commit and inrin agains his majeſtie in that pairt. Subſcrivit with our hand, and gevin under our previe ſeill, at *Lochlevin* the twentie foure day of *Julij*, and of our regne the twentie five zeir.

MARIE, be the grace of God, Quene of *Scottis*, to all and ſindrie our jugeis and miniſteris of law, liegis and ſubjectis quhome it effeiris, to quhais knawlege thir our letteris ſall cum, greeting: Forſamekle as, ſen our arrivall and returning within our realme, we willing the commoun commoditie, welth, profeit and quietnes thairof, liegis and ſubjectis of the ſamin, have imployit our body, ſpirite, haill ſenſis and forcis, to governe the ſame in ſic ſort, that our royall and honorable eſtait micht ſtand and continew with us and our poſteritie, and our luiſing and kynde liegis micht enjoy the quietnes of trew ſubjectis; in travelling quhairin, not only is our bodie, ſpirite and ſenſis ſa vexit, brokin and inquyetit, that langer we ar not of habilitie, be ony meane, to indure ſa great and intollerable panis and travellis, quhairwith we are altogidder weryit; bot als great commotiounis and troublis, be ſindrie occaſiounis, in the mean tyme hes enſewit thairin, to our greit greif: And ſeing it hes bene the pleaſour of the eternall God, of his kindlie lufe, mercy and gudnes, to grant unto us, of our awin perſoun, ane ſone, quha (in cais be the hand of God we be veſeit) will, and of richt and equitie man and aucht to ſucceed to us, and to the governament of our realme; and knawing that all creaturis ar ſubject to that immutable decreit of the Eternall, anis to rander and give up this lyfe temporal, (the hour and tyme quhairof is maiſt uncertane) and in cais, be deceis, we be takin fra this lyfe during the tyme of his minoritie, it may be dowtit greitlie that reſiſtance and trouble may be maid to our ſaid ſone, now native Prince of this our realme, in his tender zeiris (being ſwa deſtitute of us) to ſucceid to that rowme and kingdome quhilk maiſt juſtlie of all lawis appertenis to him; quhilk inconvenient, be God his help and gude providence, we mene to prevent in ſic maner, that it ſall not ly in the powar of ony unnatural ſubjectis to reſiſt Godis ordinance in that behalf: And underſtanding that nathing eirdlie is mair joyous and happie to us, nor to ſé our ſaid derreſt ſone in our awin lyfetime peciablie placit in that rowme and honorabill eſtate quhairto he juſtlie aucht and man ſucceid to; We of the motherlie affectioun we beir toward our ſaid only ſone, have renuncit and dimittit, and be thir our letteris, frelie, of our awin motive will, renuncis and dimittis the governament, gyding and governing of this our realme of *Scotland*, liegis and ſubjectis thairof, and all intromiſſioun with, and diſpoſitioun of ony caſualteis, propertie, benefices, offices, and all thingis appertening, or heirtofore is knawin, or heirefter ſall happin to appertene thairto, in favouris of our ſaid derreſt ſone; to that effect that he may be plantit, placit and poſſeſſit thairin, uſe and exerce all thingis belangand thairto, as native King and Prince of the ſamin, and ſiclike as we or ony our predeceſſouris, Kingis of *Scottis*, hes done in ony tymes bypaſt. Attoure, that this our dimiſſioun may tak the mair ſolempne effect, and that nane pretend ignorance thairof, we have gevin, grantit and committit, and be thir our letteris gevis, grantis and committis our commiſſioun, full, frie and plane powar, generall and ſpeciall command, to our traiſt couſingis *Patrick* Lord *Lindeſay* of the *Byris*, and *William* Lord *Rathven*, and to ilk ane of thame, conjunctlie and ſeverallie, to compeir before ſa mony of the Nobilitie, Clergie, Burgeſſis, and uther pepill of our realme, as ſall happin to be aſſemblit to that effect, in our burgh of *Striviling*, or ony uther place

place or placis quhair it fall be thocht maiſt convenient, at ony day or dayis, and thair publictlie, in thair preſence, for us, in our name, and upoun our behalf, dimit and renunce the governament, gyding, and reuling of this our realme, liegis and ſubjectis thairof, all intromiſſioun with the propertie, caſualitie, or utheris thingis appertening to us thairby, and all rycht and tytle that we had, hes, or may have, be ony maner of way, thairto, in favouris of our ſaid ſone, to that effect that he may be inaugurat, placit and rowmit thairin, and the crown royall delivirit to him, and be obeyit in all thingis concerning the ſamin, as we or our predeceſſouris hes bene in tymes bypaſt. And in like wayis we be thir preſents gevis, grantis, and committis our full, frie and plane powar, to our rycht traiſt couſingis *James* Erle of *Mortoun*, Lord of *Dalkeith*, *&c. Johne* Erle of *Athole*, *&c. John* Erle of *Mar*, *&c. Alexander* Erle of *Glencarne*, *William* Erle of *Menteith*, *Johne* Maiſter of *Grahame*, *Alexander* Lord *Hume*, *Adam* Biſchop of *Orknay*, the Proveſtis of *Dundie*, *Montrois*, or ony of thame, to reſſave the ſaid renunciatioun and dimiſſioun, in favouris of our ſaid ſone, and thaireftir the reſſaving thairof, to plant, place and inaugurat him in the kingdome, and with all ceremoneis requiſite to put the crown royal upon his heid, in ſigne and taikin of the eſtabliſiing of him thairin; and in his name to mak and gif to the ſaidis Nobilitie, Clergie, Burgeſſis, and utheris our liegis, his princely and kinglie ayth, detfullie and lauchfullie, as effeiris; and to reſſave thair athis for dew and lauchfull homage to be maid be thame to him in all tymes cuming, as becumis ſubjectis to thair native King and Prince: And generallie all and ſindrie uther thingis, to do, exerce and uſe, that, for ſure performance and accompliſhment heirof, may or can be done: firme and ſtable haldand, and for to hald, all and quhatſumevir thingis, in our name, in the premiſſis leidis to be done, in the word and faithfull promiſe of ane Prince; and ordanis thir our letteris, gif neid beis, to be publiſhit at all places neidfull. Subſcrivit with our hand, and gevin under our privie ſeale at *Lochlevin*, the twentie foure day of *Julij*, and of our regnne the twentie fyve zeir, 1567. *Ja.* VI. *fol.* 1. *&* 2. *act. pri.* 15 *Decembr.* 1567.

C. II. Anent the Kingis aith at his coronatioun.

ITEM, Becauſe that the incres of vertew, and ſuppreſſing of idolatrie, cravis that the Prince and the peple be of ane perfyte religioun, quhilk of Godis mercie is now preſentlie profeſſit within this realme; Thairfore it is ſtatute and ordanit be our ſoverane Lord, my Lord Regent, and thré eſtatis of this preſent parliament, that all Kingis and Princes, or Magiſtratis quhatſumevir halding thair place, quhilk heirefter in ony tyme ſall happin to regne and beir reule over this realme, that at the tyme of thair coronatioun and reſſait of thair princelie authoritie, mak thair faithfull promiſe be aith in preſence of the eternall God, that induring the haill courſe of thair lyfe, thay ſall ſerve the ſamin eternall God to the uttermaiſt of thair powar, according as he hes requirit in his maiſt haly word, revelit and contenit in the new and auld teſtamentis; and according to the ſamin word, ſall mantene the trew religioun of Jeſus Chriſt, the preiching of his halie word, and dew and rycht adminiſtratioun of the ſacramentis, now reſſavit and preichit within this realme; and

and ſall aboliſh and gainſtand all fals religioun contrare to the ſamin; and ſall reule the pepill committit to thair charge, according to the will and command of God revelit in his foirſaid word, and according to the lovabill lawis and conſtitutiounis reſſavit in this realme, nawayis repugnant to the ſaid word of the eternall God; and ſall procure to the uttermaiſt of thair powar, to the kirk of God, and haill Chriſtiane pepill, trew and perfyte peice in all tyme cuming: The rychtis and rentis, with all juſt privilegeis of the croun of *Scotland*, to preſerve and keip inviolatit; nouther ſall thay tranſfer nor alienat the ſamin: Thay ſall forbid and repres in all eſtatis and degreis, reif, oppreſſioun, and all kynd of wrang; in all jugementis, thay ſall command and procure that juſtice and equitie be keipit to all creaturis without exceptioun, as the Lord and Father of all mercyis be mercifull to thame. And out of thair landis and impyre thay ſall be cairfull to ruite out all heretiques and enemeis to the trew worſchip of God, that ſall be convict be the trew kirk of God of the foirſaidis crymis; and that thay ſall faithfullie affirme the thingis abone-writtin be thair ſolempnit aith. *Ja.* VI. *fol.* 11. *act.* 8. 15 *Decemb.* 1567.

C. III. Forme of the Kingis aith.

I SALL be leill and trew to God and haly kirk, and to the thré eſtatis of my realme, and ilk eſtait keip, defend and govern in thair awin fredome and privilege, at my gudelie powar, eftir the lawis and cuſtumis of the realme: the lawis, cuſtumis and ſtatutis of the realme, nouther to eik nor mynyſs without the conſent of the thré eſtatis; and na thing to wirk and uſe twiching the common proffet of the realme, but conſent of the thré eſtatis; the law and ſtatutis, maid be my forbearis, keip and uſe in all pointis, at my powar, to all my liegis, in all thingis, ſwa that thay repugne not aganis the faith. Swa help me God, and this haly dome. *Form. juramen*t, *cap.* 1. *pag.* 379.

Of the Kingis perfyte age, and revocatioun.

C. I. Anent the declaratioun of the Kingis motheris perfyte age.

ITEM, Anent the act maid in parliament, haldin at *Edinburgh* the fivetene day of *December* 1564, quhairin it was declarit be act, and authoriſit be our ſoverane Lordis derreſt mother, in the foirſaid parliament, declairand and findand hir grace, and hir predeceſſouris and poſteritie, Princes of this realme, to have bene and to be at lauchfull and perfyte age of twentie one zeiris compleit: Nottheles the ſaid act beand prentit, the Prenter thairof hes negligentlie left forth the forme of act of parliament. Thairfoir our ſoverane Lord, with aviſe of my Lord Regent, and thré eſtatis of this preſent parliament, hes fundin the falt in the Prenter of the ſaid act, and thairfoir ordainis the ſamin to be of new prentit, conforme to the principall act in the regiſter of the ſaid parliament, haldin the day and zeir abone-writtin: of the quhilk the tenour followis;

ANENT the article proponit to the Quenis Majeſtie and thré eſtatis of parliament, makand mentioun of ane act of parliament maid

maid be King *James* the fecund, of gude memorie, of the dait the twentie day of *Marche*, the zeir of God 1437 zeiris; and of ane uther act maid be King *James* the feird, in his revocatioun, mak-and mentioun of twentie ane zeiris of age, of the dait the fivetene day of *Februar*, 1489 zeiris, lyke as the ſaidis actis reſpective at mair lenth proportis; Deſyring thairfoir our ſoverane Lady and thré eſtatis of this preſent parliament, to declair the ſaidis actis and utheris actis following, anent the lauchfull and perfyte age of the Prince, gif it be at twentie ane zeiris compleit: (*Ja.* II. *fol.* 26. *act.* 2. *in lib. imp.* *Ja.* IV. *fol.* 85. *act.* 24. *in lib. imp.*) Quha hes declarit, and declaris, that the Quenis Majeſteis predeceſſouris, Kingis of this realme, war, be the ſaidis actis, of lauchfull and perfyte age at twentie ane zeiris compleit; lyke as hir hienes, being of twentie ane zeirs of age compleit, is of perfyte and lauchfull age; ſwa that hir hienes, hir predeceſſouris or ſucceſſouris, eftir the ſaid age of twentie ane zeiris compleit, micht have done, and may do all thingis that thaireftir ane Prince of lauchfull and perfyte age micht have done or may do of the law. *Mar. Reg. fol.* 181. *act. pri.* 15 *Decemb.* 1564. *Ja.* VI. *fol.* 14. 15 *Decemb.* 1567.

C. II. Of the Kingis perfyte age.

THE Kingis perfyte age is of twentie ane zeiris compleit; ſwa that nathing done be him thairefter may come under his general revocatioun, nor zit may not be ſpeciallie revokit be him. 28 *Maij*, 1557, *The Quenis Advocate* contra *Sir* James Hamiltoun, 2 *t. c.* 269.

C. III. The Kingis Revocatioun.

WE *James*, be the grace of God King of *Scottis*: Sen it is levit and permittit be the conſtitutiounis and ordinances of lawis civile and canon, that perſounis conſtitute in zouth and tender age, quhilkis ar greatumlie dampnagit and ſkaithit in thair heritagis be imprudent alienatiounis, donatiounis, venditiounis and permutatiounis of the ſame, may, at thair perfectioun of age, mak revocatioun and reductioun of thingis done prejudiciall to thame in thair minoriteis and tender age; and als, becaus our predeceſſouris, Kingis of *Scotland*, at thair perfyte age bypaſt, hes, in tymis bygane, maid revocatioun of all ſic thingis as wes done be thame, in hurt and detriment of thair conſcience, crown, landis, rentis and poſſeſſiounis, or ony uther thingis quhatſumevir, quhairintill thay, be circumventioun wer dampnagit and ſkaithit, caſſand and annulland all ſic giftis, alienatiounis, and donatiounis: Heirfore we cleirlie underſtanding that part of alienatiounis, donatiounis and giftis of our heritageis of our realme, wes maid be our progenitouris of gude memorie, quhome God aſſoilzie, and in likwayis be us in our zouth-hoode and unperfyte age, in hurt and prejudice of the crown of *Scotland*; and in likwayis that in tyme of our coronatioun and taking of the ſcepture of our realme, we promittit and ſwore be the halie evangell of our Lord Jeſus our Saviour, that we ſould obſerve and keip the richt honour, preheminence and privilegeis, in landis, rentis, poſſeſſiounis, dewteis, and utheris thingis thairto pertening, as is mair expreſſlie ſchawin in the law of halie kirk: And als, ſen it is ſene zit proffitabill to the eſtatis of our realme, that we have landis, lordſchippis, and poſſeſſiounis, to the honorabill ſuſtentatioun and uphalding of our dignitie royall; and als, that we have

powar, facultie and ſubſtance to the defens of our liegis and realme, quhilk lyis in the bordouris to *England*, that hes bene our enemeis of auld: And for thir conſideratiounis and utheris, in the tyme of this preſent parliament, be the the aviſe of the eſtatis and counſall being in the ſame, We revoke, reduce, caſſis and annullis, all Infeftmentis, donatiounis, alienatiounis, and diſpoſitiounis maid be our Tutoris, Governouris and Regentis, in our les age, in our name, be ony maner of way, in fee, few ferme, and frank tenement, or lang taxt, of the landis, lordſchippis, cuſtumis, annuallis, burrow maillis, and caſtelwairdis, or utheris thingis quhatſumevir, anexit to our crown, or any part of thame, alsweill gevin be our father as be us, to ony perſoun or perſounis, to be reducit agane to us and to our crown, be vertue of the actis and ſtatutis maid of the annexatiounis, and eftir the forme of the ſamin. Alſo we revoke likewayis all alienatiounis maid of ony heritage annexit to the principalitie, and to the Prince, ſecund perſoun of the realme. *Item*, In likewayis we revoke, caſſis and annullis all Infeftmentis, donatiounis, alienatiounis and giftis quhatſumevir, in lyferent or utherwayis, maid in our les age, of landis, cuſtumis, anuellis, or ony uther revenewis that our father had in poſſeſſioun the tyme of his deceaſe, giftis of officis for termes, ſic as chalmerlanreis, bailliareis, cuſtumareis, or clerkſchippis of cokquet maid for ma zeiris, bot fra ane chekkar, quhill compt be maid in the nixt chekkar eftir followand: And als, all aſſedatiounis and takkis maid for langer termis nor fyve zeiris. *Item*, In likewayis we revoke and caſſis all tailzeis maid fra the airis in generall of ony landis within our realme, agains law and gude conſcience. *Item*, We revoke all new Infeftmentis of landis gevin in blanche ferme, that war haldin of us of befoir be ſervice of waird and relief. *Item*, We revoke all regaliteis, and confirmatiounis of regaliteis, that had na poſſeſſioun of regalitie of landis, and of all officis gevin be us in heritage, or be our father, aganis the actis and ſtatutis, that na regalitie ſould be gevin in heritage without aviſe and deliberatioun of the haill parliament. *Item*, We revoke all alienatiounis maid of all heritageis in our les age that become lauchfullie in our handis be reaſoun of forfaltour, baſtardrie, or any uther wayis, and lyverentis gevin thairof in our minoritie. *Item*, We revoke all new creatiounis of landis in baroneis, annexatiounis and unionis of divers landis into fee, in prejudice of our dew ſervice, aucht to us and our progenitouris of befoir. And ſiclyke we revoke all diſchargeis of ſervice of ſuitis of court, aucht of auld to our progenitouris. *Item*, We revoke all new infeftmentis gevin of creatioun of baroneis in the landis and lordſchippis annexit to the crown. *Item*, we revoke all giftis and confirmatiounis gevin be us, of ony landis and heritageis, be evil and fals ſuggeſtioun, be the expreming of ane falſe cauſe, quhair gif thay had expremit ane trew cauſe and the veritie, we had not gevin the ſamin. *Item*, We revoke, reduce, cas and annull all giftis of patronageis and advocatiounis of kirkis and benefices that apperteinis to the crown. And *generallie*, we revoke, caſſis and annullis all and quhatſumevir thing done be us in les age, in detriment and harme of our ſaull and conſcience, hurting of the fredome and privilege of our crown, prejudiciall to the ſamin, and to us in our patrimonie thairof, or of our heritage, or to us, our airis or ſucceſſouris. And

als,

als, will and declaris, that this our revocatioun be of als great effect, and be als largelie extendit, in generall and ſpeciall, as ony revocatiounis maid be ony our predeceſſouris and progenitouris, Kingis of *Scotland* of befoir; and ſpeciallie be our derreſt father of gude mynd, quhome God aſſoilzie, and King *James* the ſecund. And proteſtis and declaris, ſuppois we of our favour and benevolence ſuffer ony perſounis to uſe or poſſes ony privilegis or poſſeſſiounis of landis, rentis, or offices, or of ony thing quhatſumevir, that ar fallin under our revocatioun, it ſall mak na richt to the uſeris and halderis thairof, but it ſall be leaſum to us to put our handis thairto, quhenever it ſall pleaſe us, botany contradictioun, be vertew of this our revocatioun, actis and ſtatutis of our realme maid of befoir. *Ja.* V. *fol.* 126, 127. *pag.* 1. *act.* 40. 7 *Junij*, 1535. *Ja.* IV. *fol.* 99. 6 *Junij*, 1493. *Mar. Reg.* 20 *Junij*, 1555.

C. IV. Revocatioun maid be our ſoverane Lady.

THE quhilk day, in preſens of the Quenis grace, *Marie* Quene dowariar, and Regent of the realme of *Scotland*, and thré eſtatis in this preſent parliament, compeirit Mr. *Henrie Lawder*, Advocate to our ſoverane Lady, and preſentit unto hir grace and thré eſtatis foirſaidis, our ſoverane Ladyis revocatioun, ſubſcryvit with hir hienes hand at *Fontane-bellew*, of the dait the twentie five day of *April* 1555 zeiris, and of hir regne the threttene zeir, the previe ſeill hungin thairat, intimat, inſinuat and declarit the ſamin; Deſyrand the Quenis grace, and thré eſtatis above-mentionat, to cauſe the ſaid revocatioun to be inſert and regiſtrat in the buikis of parliament, and the ſamin to have the ſtrenth and effect of act of parliament in all tymes to cum, and thay to interpone thair authoritie in and to the ſame. The quhilk deſyre the Quenis grace dowariar, and Regent foirſaid, and thré eſtatis of parliament, thocht reſſonabill, and hes ordanit, and ordanis the ſaid revocatioun to be inſert and regiſtrat in the ſaidis buikis of parliament, and the ſamin to be of als great ſtrenth, valour, force and effect, in all tymes to cum, as ony revocatioun maid be ony our ſoverane Ladyis predeceſſouris, Kingis or Quenis of this realme, in ony tymes bygane, in thair les age, befoir thair compleit perfyte age: And thairupon hes interponit, and interponis thair authoritie to the ſamin, conform to the ſaid revocatioun; of the quhilk the tenour followis;

WE *Mary*, be the grace of God, Quene of *Scottis*, having now be the thré eſtatis of our realme, declarit the full adminiſtratioun and rewling thairof to be in our awin handis, efter the dimiſſioun maid be our richt traiſt couſing *James* Duke of *Chaſtellarault*, Erle of *Arrane*, Lord *Hamiltoun*, *&c.* than, in our les age, tutour and governour of our realme foirſaid, of his office of tutorie and governament, conſiderand that be the privilege of the commoun law, and als that our maiſt nobill progenitouris, Kingis of *Scotland*, of gude mynd, be thair actis and ſtatutis maid in thair parliamentis, hes revokit, caſſit and annullit, all thingis done be thame in thair minoriteis and les ageis, in hurt and detriment of thair conſcience or crown, landis, rentis, poſſeſſiounis, and utheris thingis quhatſumevir perteining to the ſamin, quhairintill thay war dampnagit and ſkaithit be alienatiounis, donatiounis, preſentatiounis, venditiounis, or be ony utheris quhatſumevir; Thairfoir we now, beand furth

ſurth of our realme, having compleit the twelft zeir of our age, revokis all maner of Infeftmentis and diſpoſitiounis quhatſumevir we, or our ſaid couſing, as our tutor and governour, have maid during the tyme that he had the governament of our ſaid realme, in our les age; and all uther thingis that hes bene done in hurt and detriment of our ſaid crown, landis, rentis, poſſeſſiounis, patronageis of beneficis, and offices pertening to the famin: And in ſpeciall we revoke, caſſis and annullis, all Infeftmentis, donatiounis, alienatiounis and diſpoſitiounis, maid be us, with aviſe of our ſaid tutor and governour, or be him in our name in our les age, ony maner of way, in fee, few ferme, frank tenement, or lang takkis of ony landis, lordſchippis, cuſtumis, annuellis, fiſchingis, burrow maillis, caſtel wairdis, or uther thingis quhatſumevir, annexit to our crown, or ony part thairof, alsweill gevin be our ſaid umquhile father, quhome God aſſoilzie, as be us, to ony perſoun or perſounis, contrare the actis maid thairupoun of befoir; to be reducit to us agane and our crown, be vertew of the actis and ſtatutis maid upon annexatiounis, and eftir the forme of the famin. *Item*, We revoke all alienatiounis of ony rentis, landis and heritageis annexit to the principalitie, and to the Prince ſecund perſone of the realme, maid be us in maner foirſaid. *Item*, In likewayis we revoke, caſſis and annullis, all donatiounis, alienatiounis, few ferme, and giftis quhatſumever, in lyferent or utherwayis, maid in our non-age, of the landis, rentis, annuellis, or utheris revenewis that our ſaid umquhile father had in poſſeſſioun the tyme of his deceis, be gift or utherwayis; and of all officis, lyke as chalmerlanreis, baillierеis and cuſtumareis, maid for ma zeiris, bot fra an chekkar, quhill the compt be maid in the nixt chekkar eftir following; and of takkis and aſſedatiounis maid for langer termis nor fyve zeiris. *Item*, In lykewayis we revoke, caſſis and annullis, all tailzeis maid fra the airis in generall to the airis maill, of ony landis within our realme, agains the law and gude conſcience. *Item*, We revoke all new Infeftmentis of landis gevin in blanche ferme, that war haldin of us of befoir be ſervice of waird and releif. *Item*, We revoke all regaliteis, confirmatiounis of regaliteis, and of all offices gevin be us in heritage, or be our father, aganis the actis and ſtatutis, that na regaliteis ſould be gevin in heritage without aviſe and deliberatioun of the haill parliament. *Item*, We revoke all maner of alienatiounis be infeftmentis, or ony uther wayis, maid or grantit, of ony heritageis in our non-age, that become lauchfullie in our handis, be reſſone of forfaltour, baſtardrie, or uther richt, and lyferentis gevin thairof in our minoritie. *Item*, We revoke all new creatiounis of landis in baronyis, annexatiounis, and unionis of divers landis in fee, in prejudice of our dew ſervice, aucht to us and our maiſt noble progenitouris of befoir. And ſiclike, we revoke all diſchargeis of ſervice of ſuitis of courtis, aucht of auld to our progenitouris foirſaid. *Item*, We revoke all new Infeftmentis gevin of creatioun of baronyis in landis and lordſchippis annexit to our crown. *Item*, We revoke all giftis and confirmatiounis gevin be us of quhatſumevir landis and heritageis, be fals ſuggeſtioun, be expreming of fals cauſis, quhair, gif thair had bene expremit an trew cauſe, and the veritie, we had not gevin the famin, and thairthrow we ar greatumlie and enormlie hurt. And generallie we revoke, caſſis and annullis

nullis all and quhatſumever thingis done be us in our les age foirſaid, in detriment and harme of our ſaul and conſcience, hurting of the privilege of our crown, prejudicial to the ſamin, and to us in our patrimonie thairof; and all and ſindrie thingis that the law and conſuetude of our realme levis us to revoke; and als will and declaris, that this our revocatioun extend to all thingis alsweill not ſpecifeit as ſpecifeit thairin, quhilkis pertenit to us and our ſaid crown be deceis of our ſaid derreſt father; and to be extendit fra his deceis, in all thingis foirſaidis, to us and our behuif, als largelie as the revocatioun maid be our ſaid maiſt nobill father micht be extendit to, fra the deceis of our maiſt nobill gudſchir King *James* the foird, to the tyme, day and dait of his ſaid revocatioun, and as the revocatioun maid in King *James* the ſecundis tyme micht have bene extendit to, fra the deceis of our maiſt nobill progenitour King *James* the firſt to the making thairof: Declaring, that albeit we, of our favour and benevolence, ſuffer ony perſoun or perſounis to uſe, poſſeid, or bruik ony privilegeis, poſſeſſiounis of landis, rentis and offices, or ony thing quhatſumever falland under this our revocatioun, it ſall mak na richt to the uſaris, haldaris or poſſedaris thairof; bot it ſall be leifful to us to put our handis thairto quhen we pleis, but ony contradictioun, and that be vertew of this our revocatioun, actis and conſtitutiounis of our realme: Proteſtand ſolempnitlie, that our abſence furth of our ſaid realme at this tyme, and the ſolempniteis requyrit in that behalf (gif ony be) not being done, be na prejudice to us anent our foirſaid revocatioun, with the quhilkis we diſpens and ſuppleis all faultis thairof (gif ony be) be our quenelie powar and authoritie royall: And that this our revocatioun be intimat, inſinuat and declarit in the nixt parliament to be haldin in our burgh of *Edinburgh*, within our realme, in the month of *Maij* or *Junij* nixt thairefter. *Mar. Reg. fol.* 159. & 160. 20 *Junij*, 1555.

C. V. Difference betwixt annexit landis cumand under revocatioun, and landis cumand under forfaltour.

GIF the King annalzeis or diſponis in his les age ony annexit landis to his crown, and revokis the ſamin in parliament, the ſamin alienatioun is null in the ſelf, and requiris na declairatour; bot gif landis come in his handis be forfaltour, or be caſualitie, and he thairefter diſpone the ſame to ane uther in his minoritie, the ſamin alienatioun being lauchfullie revokit in parliament, aucht and ſould have ane ſpeciall declaratour of a Juge conforme thairto, without the quhilk the poſſeſſour thairof may not be depryvit nor put fra his poſſeſſioun. 20 *Julij*, 1541, *Hoppringle* contra *Keir*, *pri. t. c.* 350.

Of the Kingis ſecreit counſall and houſhald.

C. I. Of the ſecreit counſall.

ITEM, anent the articlis and cheſing of the Lordis ſpirituall and temporall, to be and remane with our ſoverane Lordis ſecreit counſall, for the extenſioun and furth-putting of the Kingis authoritie, and the adminiſtratioun of juſtice, it is thocht expedi-

ent that thair be choſin, to be of the Kingis ſecreit counſall, twa Biſchoppis, ane Abbot, or ane Priour, ſax Baronis, with my Lord Chancellar, Maiſter of houſhald, Chalmerlane, Privie ſeill, Secretar, the Clerk of the regiſter.

And for the mair ſickernes, ſure ſupportatioun and acceleratioun of juſtice, it is aviſit and ſene ſpeidful that the ſaid counſall, now choſin in this preſent parliament, be ſworne in the Kingis preſence, and his thré eſtatis, to give his hienes a trew and afald counſall in all materis concerning his majeſtie and his realme, and ſall remane of his counſall quhill the tyme of the nixt parliament; and to be reſponſall and accuſabill to the King, and his eſtatis of thair counſall. And our ſoverane Lord hes humblit his hienes to promit and grant in parliament to abyde and remane at thair counſallis, quhill the nixt parliament, as ſaid is. And till eſchew all circumventiounis and diſſaitis that hes bene done to the Kingis hienes, be bringing of divers ſignatouris of infeftmentis, donatiounis, giftis, conductis and remiſſiounis, and uther ſic letters, hurtand and touchand the King in his caſualtie or propertie; for the ſecluding of the ſamin, his hienes hes grantit and conſentit, be authoritie of this preſent parliament, that na ſic giftis, ſignatouris and remiſſiounis, reſpectis, conductis, and uthers letters, ſall pas in tyme to cum, without aviſe and conſent of the Lordis of ſecreit counſall; and all ſic letters to be ſubſcrivit be the King, and ſa mony of the ſaid counſall as ſall be preſent for the tyme, to the number of ſax perſounis, at the feweſt, ſittand togidder in counſall, the Chancellar beand ane. And, gif ony ſic letters be gevin without thair conſentis, in uther wayis, that the ſaidis letters be of nane avale, force nor effect, and to have na ſtrenth: And that the Chancellar, Privie ſeill, and Secretar anſwer to nane uther letters bot ſic as ſall be ſubſcrivit, as ſaid is, be the ſaidis Lordis of counſall. And in lyke wayis, the King to be reulit and governit be thair counſallis, in the diſpoſitiounis and geving of his treſour, ſilver veſſell, cheinzeis, jowellis, and uther abulzeamentis pertening to his maiſt nobill perſoun. And this maner of doing to be keipit and obſervit quhill the tyme of the nixt parliament. *Ja.* IV. *fol.* 86. *act.* 28. 15 *Feb.* 1489.

C. II. Of the Chancellaris fee.

It is ſtatute and ordanit that the Kingis Chancellar ſall have the fie and dewtie of the great ſeill, *viz.* For everie chartour of an hundreth pund land, and above the ſamin, for the fie of the ſeill ten pundis, and to the Clerk, for writing thairof, twa markis. *Item*, For ane letter or precept of ſaſine, to the Chancellar, for the fie of the ſeill, ane mark, and to the Clerk, for wryting thairof, twa ſchillingis. *Item*, For ilk letter of actornay or protectioun, for the fie of the ſeill, to the Chancellar, ane ſchilling, and to the Clerk, for writing thairof, thré penies. *Item*, For ilk brieve cloſit within walx, for the fie of the ſeill, to the Chancellar, ſax penies, and to the Clerk, for wryting thairof, thré penies. *Item*, For ilk letter of the Kingis peace for the head and ſlauchter of ony man, for the fie of the ſeill, to the Chancellar, xl. s. and to the Clerk, for writing thairof, ſax ſchillings, viij penies. *Leg. Mal. Mack.*, *c.* 7.

THE Kingis Conſtabular ſould have for his fie ten pundis, and the Marſchall ſould have ten pundis. *Item*, All crymis and tranſgreſſiounis done and committit within the juriſdictioun of the Marſchall and the Kingis Conſtable, to wit, within twa mylis, aucht and ſould be decydit in the Kingis Court, before the ſaid Marſchall and Cónſtable, and be puniſhit eftir the nature and quantity of the treſpas. *Leg. Mal. Mack. c.* 4. C. III. Of the Conſtable and Marſchall.

IT is ſtatute and ordanit, that the Maiſter of the Kingis hous ſall have for his fie fourtie pundis. *Item*, The Clerk of the Kingis hous, twentie pundis. *Item*, The Clerk of the kitching, for his fie, ten pundis. *Item*, The Pantriman, for his fie, ten pundis. *Item*, The Buttelar, for his fie, ten pundis. *Item*, The Baxter, for his fie, five pundis. *Item*, The Brouſter, for his fie, five pundis. *Item*, The maiſter Cuik, for his fie, five pundis. *Item*, The maiſter of the lardner, for his fie, five pundis. *Item*, The Porter, for his fie, five pundis. *Item*, To the Porter of the kitching, for his fie, five pundis. *Item*, To the Porter of the hall, for his fie, five pundis. *Item*, To the Iſchear of the Kingis chalmer, for his fie, five pundis. *Item*, To the maker of the fire in the hall, for his fie, xl s. *Item*, All the Kingis majeſteis uther officiaris, beand of les eſtate and degrie, ſall have ilk ane for thair fie, x ſchillingis or mair, at the ſicht and diſcretioun of the maiſter of the Kingis hous, and utheris, being of the Kingis counſall. *Leg. Mal. Mack. c.* 4. C. IV. Of the Maiſter houſhald and utheris.

THE Clerk of regiſteris zeirlie ordinar fie in the Theſauraris comptis is threttene pund, ſax ſchillingis and viij penies; and the Comptrolleris fie twentie-thré pund ſax ſchillingis and viij penies.

THE Chancellar ſall at all tymes aſſiſt the King, in giving him counſall mair ſecreitly nor the reſt of the nobilitie, to quhais ordinances all officiaris, alsweill of the realme as of the Kingis hous, ſould anſwer and obey. The Chancellar ſall be ludgit neir unto the Kingis grace, for keiping of his bodie and the ſeill, and that he may be readie, baith day and nicht, at the Kingis command. *Vid. Car. Neg. & Guth.* C. V. The office of the Chancellar.

Of SCHIREFFIS.

IT is ſtatute and ordanit, that in everie ſchireffdom thair be ane ſufficient Schireff, quha ſall miniſter juſtice to the Kingis liegis, and hald courtis in lauchfull tyme, and continew the ſame, ſwa that the actiounis or proceſſis intentit or dependand befoir him, be his negligence, iniquitie or fraud, be not ſtoppit or delayit. *Pag.* 837. *ex lib. Scon.* C. I. In ilk ſchireffdom thair ſould be ane Schireff.

ITEM, Becaus thair hes bene great lake and fault of juſtice in the north partis, as *Cathnes* and *Ros*, for fault of diviſioun of the ſchirefdom of *Inuernes*, quhilk is over greit, and thay partis ar ſa far diſtant from the burgh of *Inuernes*, throw the quhilk thay may not be brocht haiſtelie thairto without greit expenſis, labouris, and C. II. Schireffis to be maid in *Ros* and *Cathnes*.

and travellis, quhairthrow greit enormitie and treſpas hes growin in thay partis, in default of officiaris within thameſelf, that had powar to put gude reule amang the pepill: Thairfoir it is ſtatute and ordanit in this preſent parliament, that thair be an Schiref maid of *Ros*, quhilk ſall have full powar, juriſdiction and ſchirefſchip within the ſaid boundis of *Ros*, and to ſit and have his place for adminiſtratioun of juſtice in *Thane* or *Dingwall*, as the ſaid Schiref thinkis expedient, for the deciſioun of cauſis, brevis, or ony uther ſic thingis belangand to his office, as the cauſe requiris; and in lykwyſe that thair be an Schiref maid quhilk ſall be callit Schiref of *Caithnes*, quhilk ſall have full juriſdictioun of ſchirefſchip of all the haill diocie of *Cathnes*, and ſall ſit and have his place for adminiſtratioun of his office in *Dornock* or *Wik*, as he thinkis maiſt expedient for the cauſis occurrand; and all the ſchirefdomes of *Inuernes*, *Ros* and *Cathnes*, and the inhabitantis thairof, compeir to the juſtice air of *Invernes*, quhen it beis cryit and ordanit. *Ja.* IV. *fol.* 103. *act.* 95, 11 *Mar.* 1503.

The Namis of the Schireffis and ſchirefdomes of Scotland.

Nota, That the burrowis of *Edinburgh* and *Striviling* ar Schireffis within thameſelfis.

Orknay, Erle of *Orknay*,
Invernes, Erle of *Huntlie*,
Cromartie, *Urquhart* of *Cromartie*.
Nairn, *Campbell* of *Lorne*.
Elgin and *Forres*, *Dunbar* of *Cumnock*.
Aberdene, Erle of *Huntlie*.
Kincardine, Erle *Marſchell*.
Forfar, Lord *Gray*.
Perth, Lord *Ruthven*.
Fife, Erle of *Rothes*.
Kinroſs, *Lochlevin*.
Clakmanan, Laird of *Kers*.
Striviling, Erle of *Mar*.
Dumbartane, *Lennox*.
Tarbert, *Argyll*.
Lanerk, *Arrane*.
Renfrew, *Sempill*.
Air, *Campbell* of *Loudoun*.
Wigtoun, *Agnew* of that ilk.
Drumfreis, Lord *Sanquhar*.
Peblis, Lord *Zeſter*.
Selkirk, *Murray* of *Fallayhill*.
Roxburgh, *Douglaſs* of *Caveris*.
Berwick, Lord *Hume*.
Edinburgh, Schiref within itſelf.
Louthiane, Erle *Bothwell*.
Conſtab. *Hadingtoun*, Erle *Bothwell*.
Linlithgow, *Hamiltoun* of *Kynneill*.

Stewartis and Stewartreis.

Stratherne, Lord *Drummond*.
Menteth, *Stewart* of *Doun*.
Kirkcudbright and *Annanderdail*, Lord *Maxwell*.

Bailleis and Bailliareis.

Kyle, *Wallace* of *Craigie*.
Carrik, Erle of *Caſſills*.
Cunnynghame, Erle of *Eglintoun*.

C. III. Diviſioun of ſchirefdomes.

ITEM, Becaus thair hes bene wanting of juſtice in ſindrie ſchirefdomes, throw the gretnes of the ſamin; thairfore it is ſtatute and ordanit, that thair be diviſioun thairof in this maner: That *Culros* and *Tulialloun*, *Clackmannan*, and all the landis betwix it and *Striviling*, quhilk come to the airis of *Fife* and *Perth* of befoir, that all thay landis, in tyme to cum, come to the airis of *Striviling*; and

and that *Tulialloun* and *Culros* cum to the ſchiref court of *Striviling* on this wyſe; that all the perſounis put now to the juſtice air and ſchiref court of *Striviling* pay thair unlaw, baith in ſchiref court and juſtice air, ſiclike as thay payit befoir this union, without prejudice to thame thairintill.

ITEM, That the *Lenzie*, *Lochbard*, *Brimmage*, *Skaithmoir*, *Kippane*, *Garden* and *Sey-beggis*, quhilk was of the ſchirefdomes of *Dounbartane*, *Perth* and *Edinburgh* of befoir, be fra this tyme furth baith of juſtice air and ſchiref court of *Striviling*. *Item*, That the landis of *Buchquhannane*, *Fintry*, *Campſie*, *Strablane*, *Buthram*, *Drymmie*, *Inchcalzeach*, and fra thyne weſt, be of the ſchirefdome of *Dounbartane*, and compeir thair baith at juſtice air and ſchiref court, in all tyme to cum, with the lyke conditioun that the inhabitantis thairof pay thair unlaw, baith in juſtice air and ſchiref court, as thay did befoir this union, without ony prejudice to thame thairintill, as ſaid is. *Ja.* IV. *fol.* 105. *act.* 108. 11 *Mart.* 1503.

C. IV. Diviſioun of ſchirefdomes.

ITEM, Anent the article of the diviſioun of ſchirefdomes, quhilk was ordanit be the act of parliament above-writtin, it is now ſtatute and ordanit, that fra thine furth the ſaid act of parliament have ſtrenth allanerlie anent the courtis of juſtice airis, baith for ſuit, preſence, and all thingis concerning the juſtice airis; and as for the ſchiref courtis, and all uther courtis and doingis, that thay cum to the townis and ſchirefdomes that thay came to, and war of befoir the making of the ſaid act of parliament, and thair to anſwer and give ſuit and preſence, and thole law as thay war wont to do, exceptand the landis pertening to Sir *Duncane Forreſter*; that is to ſay, the landis of *Garden*, *Diſcher*, *Kippane*, *Eon*, and *Gibbin* eiſter, to remane at the juſtice airis and ſchiref courtis of *Striviling*, as thay war of befoir the making of this preſent act. *Ja.* IV. *act.* 137. 8 *Maij*, 1509.

C. V. The Schireffis ſould compeir in chekkar.

ITEM, All Schireffis ſall compeir in the chekkar, or ane ſufficient depute for him, havand power to ſwear for him, and in his ſaull, under the pane of ten pundis, and tinſell of his office, at the Kingis will and pleaſure. *Pag.* 835. *ex lib. Sconen.*

C. VI. The Schireffis ſould bring to the chekker the defaultis of the juſtice air.

ITEM, Everie Schiref, or depute, ſall bring in, be his Clerk, the defaultis and unlawis of the juſtice air, within eight dayis nixt following the fourtie dayis contenit in the extractis foirſaidis; and gif in thair defaultis the ſaid extractis be not brocht in, the ſamin ſall be imput to thame, and na allowance thairof ſall be grantit in the chekkar to ony of thame, albeit ane delay of the charge for the ſaid ſoume be grantit to thame be the King efter the tyme foirſaid, and ſchawin and declarit be his letteris gevin to that effect. *Pag.* 835. *ex lib. Sconen.*

C. VII. The Schiref ſould cauſe the lawis be keipit.

ITEM, The Schiref ſould be examinat particularlie concerning all lawis, ſtatutis and ordinances of the realme, how thay have cauſit keip and obſerve the ſamin, and in quhat maner thay have cau-

cauſit puniſh the tranſgreſſouris and brekkaris thairof within thair ſchirefdome. *Pag.* 835. *ex lib. Sconen.*

C. VIII. The Schiref hes na juriſdictioun bot within his awin ſchirefdome.

ITEM, Na Schiref, nor thair Serjand, nor Officiar, aucht or ſould intromet with ony thing pertening to the Kingis proffeit and commoditie without the boundis of his ſchirefdome; nather concerning making of attachiamentis, ſummondis nor poindis; becaus all Schireffis, Officiaris, and Serjandis, the tyme of thair creatioun, ſould ſwear in thair ſchiref court that thay ſall lellelie and trewlie ſerve the King within that ſchirefdome; and that thay ſall not wrangouſlie, and contrair the lawis of this realme, vex, trouble nor moleſt ony perſoun without the boundis of thair ſaid ſchirefdome. *Quon. attach. ca.* 57. *Aſſiſ. reg. Da. c.* 13.

C. IX. Of the Schireffis juriſdictioun.

THE Schiref, nor his deputis, is not jugeis competent to ony eccleſiaſtical perſoun or kirkman, 6 *Febru.* 1539. *pri. t. c.* 1307; nor to ony perſoun dwelland within the ſtewartrie lyand within ony ſchirefdome; nor to the landis pertening to our ſoverane Lord in propertie; becaus in thay caiſis the Kingis Stewart is Juge competent, 15 *Junij*, 1543. *pri. t. c.* 108. And ſiclike, the Schiref is na juge competent to cognoſce or decyde upoun the non-entres or ward of landis, *ult. Feb.* 1558. *Stephan. Lockhart* contra *Thomas Weir*, *pri. t. c.* 1236. *Vid.* I. *c.* 14. *h. t.*

C. X. Of Schiref courtis.

ITEM, It is ſtatute and ordanit, that at the beginning of ilk fourtie dayis, ilk Schiref ſall hald thair courtis, and Baronis, Knichtis, fréhalderis, and all Stewartis of Biſchoppis, Abbotis and Erlis, ſall be preſent at the faidis courtis; and gif ony of thame cumis not, he ſall be in the Kingis amerciament, *Lib.* 4. *c.* 19. *aſſiſ. Da. ſtat. Will. c.* 4. *Quon. attach. c.* 78. *de judic. c.* 60. And that thay quha ar challengit or attachit, for ony treſpas, ſall be thair preſent, to freith and releive thair borghis, except thay have a lauchfull eſſonzie; and that this preſent ſtatute be kepit and obſervit under the pane of ane unlaw. *Aſſiſ. Reg. Da.* II. *c.* 8. *ex lib. paro.*

C. XI. Of unlaw in the Schiref courtis.

THE amerciament befoir the Schiref ſall not exceid the ſoume of xvi *s.* and the Clerk's fee ij *s.* and ane colpindach, or xxx *d.* to his Serjand or Officiar. *Leg. Mal. Mack. c.* 4.

C. XII. Of the Schireffis fee.

IT is ſtatute and ordanit, that the Schiref ſall have for his fee ten pundis, to be payit to him of the eſcheittis; and his Clerk, for his fee, of ilk man unlawit and condampnit in ane amerciament, ſall have ij *s.* and his Serjand ſall have, for his fee, of all ſiclike condampnit amerciamentis, ane colpindach, or xxx *d. Leg. Mal. Mack. c.* 4. *Item*, The Schireffis fee ſould be payit to him of the extractis and eſcheittis of the court, and not utherwayis; and na fee ſould be gevin or allowit to him, untill firſt he have maid juſt compt and rekning. *Pag.* 835. *ex lib. Scon.*

C. XIII. Of the Schiref Clerk.

ALL Schireffis ſould have ane Clerk deput to thame be the King; the quhilk ſall have na lig nor band, or ony wayis be bund and obliſt to the Schiref, bot to the King allanerlie, and ſall be of his gracis reti-

retinew and family, quhen he ſall happin to cum to his grace; and the ſamin Clerk ſall work and do all thingis concerning his office with counſall of his grace, and conforme to his injunctionnis and aviſe in all and ſindrie thingis. *Pag.* 835. *ex lib. Sconen.*

C. XIV. The Schiref is not juge to landis annexit, or utheris, be reſſoun of regalitie.

LANDIS beand within ony Schirefdome of this realme annexit and unitit, be reſſoun of regalitie, to uther landis lyand without the ſamin ſchirefdome, the tenentis and occupiaris thairof may not be callit befoir the ſaid Schiref out of the ſchire, bot befoir the Lord of the regalitie allanerlie. 15 *Mart.* 1532. *Erle of* Mortoun *contra* M. John Ballantyne, *pri. tom. cap.* 409.

C. XV. The Schiref hes na juriſdictioun within the ſtewartrie.

THE Stewart is juge competent to all indwellaris within his ſtewartrie; and thairfoir the Schiref hes na power to cognoſce upon ony ſic cauſis, nather be reſſoun of his office, nor zit in reſpect of ony commiſſioun or letteris of the Lordis direct to him to tak cognition in ony ſic mater, 18 *Junij.* 1543. 2 *t. c.* 145. *Item,* Gif ane ſpulzie be committit be ony perſoun aganis ane uther, and the alledgit committer thairof dwell within the ſtewartrie of ony province, the Stewart is juge competent thairto; and the Schiref of the ſchirefdome hes na power to cognoſce thairintill. 24 *Januar.* 1527, David Balfour *of* Burlie *contra* William Scot, *pri. tom. cap.* 336.

C. XVI. The Schiref hes na powar to cognoſce upon the deforcement of the Kingis Officiaris.

GIF ony of the Kingis liegis, Officiaris, Schireffis in that part, be deforcit in the executioun of thair office, the Schiref is not juge competent to cognoſce thairanent, bot the Lordis of counſall, as Jugeis ordinar, aucht and ſould call befoir thame the committer of the ſaid deforcement, committit aganis our ſoverane Lordis Officiar, Schiref in that part; notwithſtanding it be objectit in jugment be the Schireff, or ony uther in his name, that thay are not jugeis competent thairto. 24 *Jan.* 1498. *Sir* Walter Forreſtare *contra the Kingis Advocate, pri. t. cap.* 103.

C. XVII. The Schiref is juge competent to the deforcement done to his awin Officiar.

THE Schiref is juge competent in his awin court, to cognoſce of all deforcementis allegit committit and done aganis ony Officiar of his ſchirefdome, in the executioun of his office, or poinding of ony gudis or landis lyand within the ſamin ſchirefdome: And gif the ſamin be lauchfullie provin, he aucht and ſould certifie our ſoverane Lord thairof, that punitioun may be tane thairof, according to the lawis of this realme: And ſiclike to underſtand of ilk uther Juge ordinar, concerneing all deforcementis committit aganis his Officiar, within his juriſdictioun. 21 *Junij,* 1504. *The King contra* Alexander Wauch *and his complices, pri. t. cap.* 206.

C. XVIII. The Schiref is not a competent juge in ane actioun concerning the propertie or ground richt of heritage.

THE Schiref of the ſchire, nor na Schiref in that part, albeit thay have commiſſioun of the Lordis to that effect, ar Jugeis competent in ony actioun or cauſe concerneing the propertie or ground richt of ony manis landis; bot the ſamin ſould be decydit befoir the Lordis of counſall, or than befoir the Juſtice-generall, or his deputis, be a breive of perambulation, in all cauſis quhairin ſic brevis ar neceſſarlie requirit. 18 *Decemb.* 1523, Robert Dalzell *contra* James Livingſtoun, *pri. t. c.* 638.

Of

Of the trew and halie kirk.

C. I. That the actis of parliament maid aganis Godis word, and maid for mantenance of idolatrie, be annullit.

ITEM, Our ſoverane Lord, with aviſe of his derreſt Regent and thré eſtatis of this preſent parliament, ratifyis and apprevis the act under-writtin, maid in the parliament haldin at *Edinburgh* the xxiiij day of *Auguſt* 1560 zeiris; and of new, in this preſent parliament, ſtatutis and ordanis the ſaid act to be as ané perpetuall law to all our ſoverane Lordis liegis in all tymis cuming; of the quhilk the tenour followis:

FORASMEKLE as thair hes bene divers and ſindrie actis of parliament, maid in King *James* the firſt, ſecund, third, feird and fyft, thair tymis, Kingis of *Scotland* for the tyme, and als in our ſoverane Lordis tyme, not aggreing with Godis haly word, and be thame divers perſonis tuik occaſioun to mantene idolatrie and ſuperſtitioun within the kirk of God, and repreſſing of all ſic perſonis as war profeſſouris of the ſaid word; quhairthrow divers innocentis did ſuffer: And for eſchewing of ſic inconvenientis in tyme cuming, the thré eſtatis of parliament hes annullit, and declarit all ſic actis maid in tymes bypaſt, not aggreing with Godis word, and now contrare to the confeſſioun of faith, according to the ſaid word, publiſt in this parliament, to be of nane avail, force nor effect; and decernis the ſaid actis, and everie ane of thame, to have na effect nor ſtrenth in tyme to cum, bot the ſamin to be aboliſt and extinct for ever, in ſa far as ony of the foirſaidis actis ar repugnant and contrare to the confeſſioun of faith, and word of God foirſaid, ratifyit and apprevit be the eſtatis in this preſent parliament: And thairfoir decernis and ordanis the contravenaris of the ſamin act, in ony tyme heireftir, to be puniſt according to the lawis. Of the quilk confeſſioun of the faith the tenour followis:

Confeſſioun of faith and doctrine preſentlie profeſſit within this realme.

WE confes and acknawledge ane onlie God, *&c. Vide in lib. impreſſ. Jac.* VI. *reg. pri. fol.* 5. *act.* 4. 15 *Decembr.* 1567.

C. II. Anent the trew and halie kirk, and of thame that ar declarit not to be of the ſamin.

ITEM, Foraſmekle as the Miniſteris of the bleſſit evangell of Jeſus Chriſt, quhome God of his mercie has now raiſit up amangis us, ot heireftir ſall rais, aggreing with thame that now levis, in doctrine, and adminiſtratioun of the ſacramentis, and the pepill of this realme, that profeſſis Chriſt, as he now is offerit in his evangell, and do communicat with the halie ſacramentis, (as in the reformit kirkis of this realme they are publictlie adminiſtrat) according to the confeſſioun of the faith; Our ſoverane Lord, with aviſe of my Lord Regent, and thré eſtatis of this preſent parliament, hes declarit and declaris the foirſaid kirk to be the onlie trew and halie kirk of Jeſus Chriſt within this realme: And decernis and declaris, that all and ſindrie quha outher gainſayis the word of the evangell, reſſavit and apprevit as the heidis of the confeſſioun of faith profeſſit in parliament of befoir, in the zeir of God 1560 zeiris, as alſwa ſpecifyit in the actis of this parliament, mair particularlie dois expres, and now ratifyit and apprevit in this preſent parliament; or that refuſis the participatioun of the halie ſacramentis, as thay ar now miniſtrat,

niſtrat, to be na memberis of the ſaid kirk within this realme, now preſentlie profeſſit, ſwa lang as thay keip thameſelfis ſa devydit fra the ſocietie of Chriſtis bodie. *Ja.* VI. *reg.* 1. *fol.* 11. *act.* 6. 15 *Decembr.* 1567. *Ja.* VI. *fol.* 3. *act.* 1. 20 *Octobr.* 1579.

C. III. Anent Papiſtis, and thame quha abſtenis fra the reſſaving of the ſacrament.

ITEM, Forſamekle as thair was ane act maid in the parliament haldin in the firſt zeir of our ſoverane Lordis regne, that now is intitulat, *Anent the trew and halie kirk, and of thame that ar declarit not to be of the ſame kirk*; quhilk act our ſoverane Lord, with aviſe and conſent of my Lord Regentis grace, the thré eſtatis, and haill bodie of this preſent parliament, ratifyis, approvis, and, for his hienes and his ſucceſſouris, perpetuallie confirmis. And ſeing the educatioun of our ſoverane Lord is in the trew religioun of Jeſus Chriſt, and that the ſamin religioun, be lawis and actis of parliament maid in his hienes regne, is eſtabliſhit, and that it is baith godlie and expedient that all his hienes ſubjectis worſchip the onlie trew God, in the uniformitie of religioun, and his hienes obedience: Thairfoir it is ſtatute and ordanit be our ſaid ſoverane, with aviſe of his ſaid Regent, the thré eſtatis, and haill bodie of this preſent parliament, that the lauchfull Archbiſchoppis, Biſchoppis, Superintendentis, and Commiſſionaris of the dioceis and provinces of this realme, be thameſelfis, and the Miniſteris and Reidaris ſerving at the kirkis within thair charges reſpective, with all diligence, eftir the publicatioun of this preſent act, note the names of the perſounis, alſweill men as wemen, ſuſpectit to be Papiſts, or that hes not communicat with the ſacramentis, as thay ar now trewlie miniſtrat in the reformit kirkis of this realme; and with the lyke diligence lauchfullie admoniſh thame, according to the ordour of the kirk: And in caſe thay be furth of the realme, upon thré ſcoir dayis warning, to recant thair papiſtical errouris, gif the confeſſioun of thair faith according to the forme approvit in our ſoverane Lordis parliament, be participant with the ſacramentis, and ſubmit thameſelfis to the diſcipline of the trew kirk, within certane reſſonabill ſpace, under the pane of excommunicatioun; and gif thay failzie, to pronounce the ſentence of excommunicatioun aganis thame; and in cais of the contumacie and non-compeirance of ony perſounis ſwa admoniſhit, or comperand, gif thay refuſe to obey the admonitioun; and thay quha hes returnit to their errouris efter thair confeſſioun anis gevin; that everie lauchfull Archbiſchop, Biſchop, Superintendent, or Commiſſionar, preſent ane roll and catalogue of the names of the diſobedientis, obſtinat or relapſe perſounis, to our ſoverane Lord and his Regent, betwixt and the firſt day of *Junij* nixt to cum, to the effect that the ſamin may be imprentit, divulgat, and affixit on the tolbuith of *Edinburgh*, and utheris tolbuithis and publict places of judgement within this realme, under the panis following: That is to ſay, Everie Archbiſchop or Biſchop that ſall be fund remiſs or negligent thairin, be the general Aſſemblie of the kirk, under the pane of tynſall of the frutes of his benefice for ane zeir, to our ſoverane Lordis uſe; and everie Superintendent or commiſſionar, under the pane of tynſall of his ſtipend for ane zeir alſwa, to our ſoverane Lordis uſe, and removing of him furth of his office, and placing of ane uther mair diligent thairin; and that the diſobedient, obſtinat and relapſe perſounis, to be con-

tenit in the ſaid catalogue, (efter the publicatioun thairof) ſall be haldin, repute and eſtemit infamous, and unable to ſit or ſtand in judgement, perſew, beir office, nor ſall not be admittit as previs, witneſſis, or aſſyſouris, aganis ony profeſſing the trew religioun, ay and quhill thay have reconcilit thameſelfis to the diſcipline thairof, and obtene teſtimonial thairupon; quhilk inhabilitie being alledgit aganis ony Jugeis, Principall or Deputis, memberis of court, Officiaris, parteis or Procuratoris, perſounis of inqueſt, or witneſſis, ſall be relevant exceptioun of the law, to declyne thame fra judgment, office, perſute, procuratioun, inqueſt, or beiring witnes, without thay then preſentlie produce ſufficient teſtimoniall, witneſſing thame to be reſſavit as memberis of the trew kirk: As alſwa, the Depute of the Judge principall, quha is the excommunicate, or the Procurator quha will compeir for the excommunicate, ſall not be ſufferit to proceid, nor hard in judgment (the excommunicatioun being opponit and verefyit aganis the maker of the depute, or conſtituant of the procurator) except that the Principall, be quhome thay proceid, or uſe thair procuratioun, firſt be reſſavit to the kirk, and have ſufficient teſtimoniall thairupon; and that the ſaid exceptioun be not admittit aganis ony quhilk ſall not be ſpeciallie comprehendit in the ſaid catalogue: And in caſe the Judge proceid, notwithſtanding the ſaid exceptioun, the ſamin being lauchfullie proponit and ratifyit be the catalogue foirſaid, ſic contemptuous proceiding teſtifyit be ane inſtrument, and producit befoir the Lordis of counſall, ſall be ane ſufficient caus of ſuſpenſioun, and diſcharge of the execution of the decreit to be gevin in that mater. *Ja.* VI. *reg.* 4. *fol.* 6. *act.* 2. 26 *Jan.* 1572.

C. IV. Anent the diſobedientis quhilkis ſall be reſſavit to our ſoverane Lordis mercie and pardoun.

ITEM, Forſamekle as thair hes bene greit rebellioun and diſobedience aganis our ſoverane Lordis authoritie in tyme bypaſt; and ſeing the cauſe of Godis trew religioun, and his Hienes authoritie foirſaid, ar ſa joynit, as the hurt of the ane is commoun to baith; It is thairfoir declarit, ſtatute and ordanit be our ſoverane Lord, with aviſe and conſent of my Lord Regentis grace, with the thré eſtatis, and haill bodie of this preſent parliament, that nane ſall be repute as loyall and faithfull ſubjectis to our ſoverane Lord, or his authoritie, bot be puneiſabill as rebellaris and ganeſtandaris of the ſamin, quhilk ſall not give thair confeſſioun, and mak thair profeſſioun of the ſaid trew religioun; and that all ſic as makis profeſſioun thairof, and as zit hes maid defectioun fra thair dew obedience, aucht to our ſoverane Lord, ſall be admoniſhit be the paſtouris and miniſteris of the kirk, to acknawledge thair offence, and returne to thair debtfull obedience; and gif thay failzie thairin, to be excommunicate and ſecludit fra the ſocietie of the kirk, as rebellious and corrupt memberis, betwix and the firſt day of *Junij* nixt to cum; and that alwayis befoir ſic perſounis as hes maid defectioun be reſſavit to our ſoverane Lordis mercy and favour, thay ſall gif the confeſſioun of thair faith of new, and promis to continew in the confeſſioun of the trew religioun in tyme cuming, mantene our ſoverane Lordis authoritie; and that thay ſall, at the uttermaiſt of thair power, fortefie, aſſiſt and mantene the trew preichouris and profeſſouris of Chriſtis religioun, aganis quhatſumevir enemeis and ganeſtandaris of the ſamin, and namelie aganis all ſic, of quhatſumever

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natioun, eſtait or degré thay be of, that hes joynit and bund thame ſelfis, or hes aſſiſtit, or aſſiſtis, to ſet fordwart and execut the cruell decreitis of the counſall of *Trent* (quhilk, maiſt injuriouſly, is callit be the adverſaris of Godis treuth, the halie league) contrair the preichouris and trew profeſſouris of the word of God. *Ja.* VI. *reg.* 4. *fol.* 7. *act.* 4. 26 *Januar.* 1572.

C. V. The ratificatioun of the libertie of the trew kirk of God and religioun.

OUR ſoverane Lord, with aviſe of his thré eſtatis of this preſent parliament, hes ratifyit and apprevit, and be the tenour heirof ratifyis and apprevis all and quhatſumevir actis of parliament, ſtatutis and conſtitutiounis paſt and maid of befoir, aggreabill to Godis word, for mantenance of the libertie of the trew kirk of God, and religioun now preſentlie profeſſit within this realme, and puritie thairof; and decernis and declaris the ſamin to have the effect in all pointis, efter the forme and tenour thairof. *Ja.* VI. *act.* 1. 25 *Julij*, 1578.

C. VI. That the gleibis of miniſteris and Reidaris be fré of teindis.

ITEM, Anent the article proponit, gif Miniſteris and Reidaris aucht and ſould pay teind for thair gleibis and kirklandis, deſignit to thame, conforme to the act of parliament maid thairanent: For anſwer thairto, our ſoverane Lord, with aviſe and conſent of the thré eſtatis of this preſent parliament, findis and declaris, that the ſaidis Miniſteris and Reidaris aucht and ſould pay na teind for thair gleibis and kirklandis, extending to four aikeris of land, deſignit to thame conforme to the ſaid act; bot decernis and declaris thame to be fré of thair ſaidis teindis, and diſchairgis thame *ſimpliciter* thairof in all tyme cuming. *Ja.* VI. *act.* 2. 25 *Julij*, 1578.

C. VII. Of the aith of kirkmen.

I SAL be lele and trew to zou my liege Lord and ſoverane, Schir *N.* King of *Scottis*, and ſall not ſie zour ſkaith, nor heir it, bot I ſall let it at all my power, and warne zou thairof. Zour counſall celand that ze ſchaw me; the beſt counſall that I can to gif to zou, quhen ze charge me. *In verbo Dei.* And ſwa help me God, and the halie Evangelis. *Form. juram. c.* 2.

C. VIII. Admiſioun of Biſchoppis.

NA Archbiſchop nor Biſchop within this realme ſall uſe ony juriſdictioun, or the office of ane Archbiſchop, quhill he be admittit be the King, 28 *Junij*, 1515. *The King* contra *the Biſchop of* Murray, *pri. tom. c.* 360.

C. IX. The fruitis of the temporalitie of all Biſchoprikis pertenis to the King, *ſede vacante.*

GIF ony Biſchop deceis, the King hes richt and title to intromit with and uptak the maillis, fermes, profitis and dewteis of all landis, togidder with profitis and emolumentis of courtis, and of temporall juriſdictioun, pertening to the biſchoprick, and may diſpone thairupon at his pleaſour; bot it is not leaſum to his hienes to flit, remove or expell the tenentis, occupiaris and laboraris of the ſaidis landis, be ony maner of way, bot thay aucht and ſould bruik and joiſe thair takkis, rowmis, ſteidingis and poſſeſſiounis, the tyme of the ſait vacand, as thay did of befoir. *Item*, The King hes richt and title (the ſait beand vacant and na langer) to preſent worthie and qualifyit perſounis to all kirkis and eccleſiaſtical benefices quhatſumevir, pertening to the collatioun of the Biſchop deceaſit. *Ja.* II. 24 *Decembr.* 1451. 2 *t. c.* 345. Attoure, the Kingis donatour

tour havand the gift of the temporalitie, the ſait beand vacand, ſould have the keiping of the touris, fortalicis and places pertening to the ſaid biſchoprick, ay and quhill the lauchfull proviſioun of a Biſchop thairto. 18 *Maij*, 1548. *pr. t. c.* 666.

C. X. The fruitis of the ſpiritualitie of all biſchoprikis pertenis to to the Vicar generall, *ſede vacante.*

GIF ony Biſchop of this realme deceis, it is leaſum to the Vicar generall to tak up, reſſave, ingadder, and collect all and ſindrie the fruitis, rentis and dewteis pertening *ad menſam epiſcopi*, and with all uther profitis, emolumentis and dewteis quhatſumevir pertening to the ſpiritualitie of the ſaid Biſchoprick; and to diſpone thairupon, induring all the haill tyme of the ſait to be vacand; provyding that he be bund and obliſſit to give juſt compt and rekning of his intromiſſioun and adminiſtratioun to the intrant and ſucceſſour of him quha is deceiſſit. *Ja.* II. 24 *Septemb.* 1451, 2 *t. c.* 344.

C. XI. The Biſchop ſould cauſe prayer be maid for the King.

ITEM, It is ordanit, that ilk Biſchop give bidding be his letters patent to his Clergie, to mak [proceſſiounis and] ſpiritual prayers for the weilfair and the hailthfull eſtate of our Lord the King, and our Lady the Quene, and thair barnetyme. *Ja.* I. *fol.* 7. *act.* 43. 12 *March*, 1424.

C. XII. Anent the admiſſioun of thame that ſall be preſentit to benefices havand cure of miniſterie.

ITEM, It is ſtatute and ordanit be our ſoverane Lord, with avise of his derreſt Regent, and thré eſtatis of this preſent parliament, that the examinatioun and admiſſioun of Miniſteris within this realme, be onlie in the power of the kirk, now oppinlie and publictlie profeſſit within the ſamin; the preſentatioun of laick patronageis alwayis reſervit to the juſt and antient patronis; and that the patroun preſentand ane qualifyit perſoun within ſax monethis, (efter it may cum to thair knawlege of the deceis of him quha bruikit the benefice of befoir) to the Superintendent of thay partis quhair the benefice lyis, or utheris havand commiſſioun of the kirk to that effect; utherwayis the kirk to have power to diſpone the ſamin to ane qualifyit perſoun for that tyme. Provyding that in cais the patroun preſent ane perſoun qualifyit to his underſtanding, and failzeing of ane, ane uther, within the ſaid ſax monethis, and the ſaid Superintendent or Commiſſionar of the kirk refuſis to reſſaif and admit the perſoun preſentit be the patroun, as ſaid is, it ſall be leſum to the patroun to appeill to the Superintendent and Miniſteris of that province quhair the benefice lyis, and deſyre the perſoun preſentit to be admittit: Quhilk gif thay refuſe, to appeill to the generall aſſemblie of the haill realme; be quhome the cauſe beand decydit, ſall tak end, as thay decerne and declair. *Ja.* VI. *reg.* 1. *fol.* 11. *act.* 7. 15 *Decembr.* 1567.

C. XIII. The libertie of the halie kirk.

IT is ſtatute and ordanit, that the halie kirk of this realme of *Scotland*, with all richtis and liberteis pertening thairto, be defendit and keipit in all pointis; and that the ſamin kirk, and Godis halie word and religioun, be mantenit and preſervit fra all oppreſſioun, burding and harme done thairto in ony tyme bygane: And thairfoir the Kingis grace willis and commandis that na perſounis heirefter ludge nor ſorne in houſis or granges pertening to religious or eccleſiaſticall men, to the harme, hurt, or deſtructioun of thame, or of thair guidis and geir, *Stat.* 2. *Rob. Br. c.* 1. *Item*, It is ſtatute and

and ordanit, for the honour and worſhip of God almichtie, and fredome and libertie of halie kirk and kirkmen, That the halie kirk, and ſpiritual perſounis and miniſteris of it, bruik and jois their auld privilegeis and fredomes, and be mantenit in honour and libertie, be our ſoverane Lordis authoritie; and the brekkaris and offendaris thairof to be puniſhit with all rigour: And that na man let thame to ſet thair landis and teindis, under the pane that may follow be ſpirituall law or temporall. *Ja.* I. *fol.* 2. *act.* 1. 26 *Maij*, 1424. *Ja.* I. *fol.* 8. *act.* 51. 11 *Martij*, 1425. *Ja.* III. *fol.* 46. *act.* 1. 9 *Oct.* 1466. *Ja.* III. *fol.* 51. *pa.* 2. *ſect.* 2. 20 *Novemb.* 1469. *Ja.* III. *fol.* 55. *act.* 52. 6 *Maij*, 1471. *Ja.* III. *fol.* 58. *act.* 1. 9 *Maij*, 1474. *Ja.* III. *fol.* 60. *act.* 1. 20 *Novemb.* 1475. *Ja.* III. *fol.* 62. *act.* 6. *Auguſti*, 1477. *Ja.* III. *fol.* 71. *act.* 108. *in fine*, 24 *Feb.* 1483. *Ja.* IV. *fol.* 79, *act.* 1. 6 *Octob.* 1488. *Ja.* IV. *fol.* 84. *act.* 1. 15 *Febr.* 1489. *Ja.* IV. *fol.* 90. *act.* 43. 18 *Maij*, 1491. *Ja.* IV. *fol.* 94. *act.* 62. 26 *Jun.* 1493. *Ja.* IV. *fol.* 100. *act.* 85. 13 *Junij*, 1496. *Ja.* IV. *fol.* 102. *act.* 91. 11 *Mar.* 1503. *Ja.* IV. *fol.* 110. *act.* 136. 8 *Maij*, 1509. *Ja.* V. *fol.* 112. *act.* 1. 12 *Julij*, 1515. *Ja.* V. *fol.* 118. *act.* 7. 7 *Junij*, 1535. *Ma. Reg. fol.* 159. *act.* 1. 20 *Junij*, 1555.

C. XIV. Anent priviliegeis grantit to kirkmen.

ITEM, Our ſoverane Lord, with aviſe and conſent of my Lord Regent, and thré eſtatis of this preſent parliament, hes ratifyit, and ratifyis, all civile privilegeis, grantit and gevin be our ſoverane Lordis predeceſſouris, to the ſpiritual eſtate of this realme, in all pointis, efter the forme and tenour thairof. *Ja.* VI. *fol.* 20. *act.* 31. 15 *Decemb.* 1567.

C. XV. Ratificatioun of the actis maid of befoir, anent the fredome and libertie of halie kirk.

ITEM, Our ſoverane Lord, with aviſe and conſent of his Regent, thré eſtatis, and haill bodie of this preſent parliament, hes ratifyit, and be this preſent act ratifyis and approvis all and quhatſumever actis and ſtatutis maid of befoir be our ſoverane Lord and his predeceſſouris, anent the fredome and libertie of the trew kirk of God now publictlie profeſſit within this realme. *Ja.* VI. *fol.* 2. *act.* 2. 7 *Septemb.* 1571.

C. XVI. Privilege and fredome of kirk landis.

It is defendit and forbiddin be King *Alexander*, that nane of his Officiaris, ſervandis nor Miniſteris, tak to the Kingis uſe, name or behalf, ony thing within the boundis or landis pertening to the halie kirk, nor fra ony tenentis or poſſeſſouris thairof, except the ſamin thing may not be had, or gottin, within the landis pertening to the King or his Baronis; and in this cais na thing may be tane nor apprehendit within the meithis and marchis of kirk landis, bot at the ſicht and aviſe of the Officiaris and Serjandis of the ſamin landis. *Leg. Foreſt. cap.* 48. *de jud. c.* 36.

C. XVII. Libertie brekkaris curſit.

The brekkaris of the libertie of halie kirk may be curſit. *Ja.* II. *fol.* 27. *act.* 7. 4 *Novemb.* 1443.

C. XVIII. Iniurie done to kirkmen.

ITEM, It is aviſit and thocht ſpeidfull be the Lordis of the articlis, that gif thair be ony kirkmen of ony degré hurt or greivit, aganis the privilege of the kirk, that thay cum till our ſoverane

Lord, and his counſall, and ſchaw thair complaintis, and quhame by thay ar injurit; and thairefter, reformatioun, amendis and executioun to be maid of the iniureis, with punitioun of the treſpaſſouris, [to the pleaſour of God, and honour of our ſoverane Lord] according to the auld lawis, actis and ſtatutis maid of befoir. *Ja.* III. *fol.* 71. *pag.* 1. *act. poſt.* 108. *in fine acti,* 24 *Feb.* 1483. *Ja.* III. *fol.* 60. *pag.* 1. *in pri. & in fine acti,* 20 *Novemb.* 1475. *Ja.* IV. *fol.* 79. *act.* 1. *in fine.* 6 *Octob.* 1488. *Ja.* IV. *fol.* 94. *act.* 62. *in fine.* 26 *Junij,* 1493. *Ja.* IV. *fol.* 100. *act.* 85. *in fine.* 13 *Junij,* 1496. And quhair it may be underſtandin that ony of the ſaidis privilegeis, liberteis or fredomes, is hurt or brokin in ony ſpeciall point, in contrare the premiſſis, that the complaintis ar ſchawin of ony Prelate or Kirkman, that juſtice ſuld be miniſterit efter the form of thair auld privilegeis grantit to thame of befoir. *Ja.* IV. *fol.* 90. *act.* 43. 18 *Maij,* 1491.

C. XIX. He that takis places of Biſchoppis and Abbotis, efter thair deceis, committis treſon.

ITEM, In the firſt, for the honour of God and halie kirk, our ſoverane Lord, with aviſe of the thré eſtatis, ordanis, that the fredomes, privilegeis and immuniteis of halie kirk, and all ſpirituall perſounis, be obſervit and keipit in honour, worſchip and dignitie, for the tyme of our ſoverane Lord that now is, lyke as hes bene in the tyme of his maiſt nobill progenitouris, of gude mynd, quhome God aſſoilzie, of befoir, with this additioun: That for ſamekle as, quhen prelaceis, ſic as biſchoprikis or abbais happinis to vaik, the nominatioun thairof pertenis to our ſoverane Lord, and the proviſioun of the ſamin to our halie father the Pape. Nevertheles, evill diſpoſit perſounis, in troublus tymes, hes put handis, and takin Biſchoppis caſtellis, palices and fortalices, at thair awin hand, be thair awin authoritie, and but our ſoverane Lordis command, conſent or letters, at tymes quhen biſchoprikis vaikis, and utheris; and in lykewayis enteris in abbais, and takis thame, and puttis the ſamin in keiping in ſecular mennis handis, but conſent, command or letters of the Kingis grace, and als but command, aviſe or deſyre of the conventis of ſic abbais, in hie diſpleaſour of God almichtie, [our halie father the Pape,] and in hie contempt of our ſoverane Lordis authoritie, quhairthrow the kirk and kirkmen ar heavilie hurt and dampnageit: Thairfore it is ſtatute and ordanit in this preſent parliament, that quhatſumever perſoun or perſounis, in ony tyme to cum, takis ony biſchopis placis, caſtellis or ſtrenthis, or enteris be thair awin autoritie, in abbais, to hald tha placis, but our ſoverane Lordis command, letters, or chargeis, or deſyre of the conventis thairof, at tymes quhen ſic biſchoprikis or abbais vaikis, or ony uther tyme, thay not vaikand, but the Kingis autoritie, thay ſall incur the cryme of treſon and leſe majeſtie, and ſall be callit thairfoir at the Kingis pleſure, upoun thair forfaltour, and to tyne thair lyvis, landis, heritageis, and gudis, movabill and unmovabill, honour and officis, becaus the Kingis grace is haldin and bundin to defend the halie kirk and kirkmen in thair juſt actiounis. *Ja.* V. *fol.* 142. *act.* 107. 14 *Mart.* 1540.

C. XX. *ITEM,* It is ſtatute and ordanit, that na man vex kirkmen in thair perſounis nor gudis, under all pane and charge that thay may inrin aganis God and our ſoverane Lord the Kingis majeſtie. *Ja.* II. *fol.* 26.

fol. 26. *act.* 5. 5 *Auguſti*, 1440. And gif ony landis or poſſeſſionis of halie kirk be wrangouſlie annalyit, thay ſould be reſtorit agane be lauchfull proceſs of law. *Ja.* I. *fol.* 6. *act.* 29. 12 *Mart.* 1424. *Item*, That the takaris and intromettaris with the landis, teindis, obligatiounis, proffeitis and dewteis of halie kirk, without tak or aſſedatioun of the Perſoun, Vicar, or thair fermoraris, be callit, and that to be a punct of dittay in tyme to cum. *Ja.* IV. *fol.* 84. *pag.* 1. *ſect.* 2. 15 *Feb.* 1489.

C. XXI. Anent thame that perturbis the kirk in tyme of devine ſervice.

ITEM, It is ſtatute and ordanit, aganis all perſounis quhilkis contempnandlie makis perturbatioun in the kirk, the tyme of devine ſervice, and precheing of the word of God, ſtopand the ſamin to be hard and ſene be the devote pepill, and will not deſiſt and ceis thairfra, for na ſpirituall monitioun that the kirkmen may uſe upoun thame: Thairfoir quhatſumever perſoun makis perturbatioun or impediment in the kirk in maner foirſaid, ſall incur the panis as eſter followis: That is to ſay, for the firſt fault, ane Prelate, Erle or Lord, ten pundis; ane Barone, or perſoun conſtitute in dignitie eccleſiaſtical, fyve pundis; ane vaſſall, frehalder, burges, or ſmall beneficit man, fourtie ſchillingis; and utheris, twentie ſchillingis; and pure folkis, that hes na gudis, to be put in preſoun for fyftene dayis to faſt on breid and water; and for the ſecond fault the doubling thairof, and for the third fault, warding of thair perſounis, or baniſſing for zeir and day: And ordanis the Dean of Gilde, kirkmaiſteris and reularis, to gar leiſch barnis that perturbis the kirk in maner foirſaid. *Mar. Reg. act.* 17. 1 *Feb.* 1551.

C. XXII. Anent thame that knawis thame ſelfis under proces of curſing.

ITEM, That becauſe mony perſounis, wittanlie knawand thame ſelfis under proces of curſing, and beand chargeit to remove fra devine ſervice, wilfullie enteris thame ſelfis thairto, and will not remove, quhairthrow thay ſtop the remanent Chriſtian pepill fra devine ſervice, and incurris the greit curſing of the law: Thairfoir it is ſtatute and ordanit, that quhaſaever beis notit and convictit to have remanit in the kirk in tyme of devine ſervice, eſter that he have bene warnit and chargeit to remove, beand under proces of curſing denuncit upon him dewlie, outher oppinlie in his paroche kirk, or perſonally, to be puniſt as perturbaris of the kirk of God, and to incur the panis of the foirſaid laſt act. *Mar. Reg. act.* 18. 1 *Feb.* 1551.

C. XXIII. Quhairin the juriſdictioun of the halie kirk conſiſtis.

ITEM, Anent the article proponit and gevin in be the kirk to my Lord Regent, and thré eſtatis of this preſent parliament, anent the juriſdictioun juſtlie appertening to the trew kirk and immaculat ſpouſe of Jeſus Chriſt, to be declarit and expreſſit, as the article at mair lenth is conſavit; The Kingis grace, with aviſe of my Lord Regent, and thré eſtatis of this preſent parliament, hes declarit and grantit juriſdictioun to the ſaid kirk; quhilk conſiſtis and ſtandis in the preiching of the trew word of Jeſus Chriſt, correctioun of maneris, and adminiſtratioun of halie ſacramentis; and declaris thair is na uther face of kirk, nor uther face of religioun nor is preſentlie be the favour of God eſtabliſht within this realme; and that thair be na uther juriſdictioun eccleſiaſticall acknawlegeit within this realme, uther than that quhilk is and ſall be within the ſame kirk, or that quhilk flowis thairfra concerning the premiſſis. And forther

ther, our ſoverane Lord, with aviſe of my Lord Regent, and thré eſtatis foirſaidis, hes gevin and gevis power and commiſſioun to Schir *James Balfour* of *Pettindreich* Knycht, Priour of *Pettinweme*, *Mark* Commendatar of *Newbottle*, *Johne* Priour of *Coldinghame*, Lord privie ſeill, Mr. *James Macgill* of *Rankelour-nether*, Clerk of Regiſter, *William Maitland* zounger of *Lethingtoun*, Secretar to our ſoverane Lord, Schir *Johne Bellenden* of *Auchnoull* Knycht, Juſtice Clerk, *Johne Erskin* of *Dun*, Mr. *Johne Spottiſwod*, Superintendent of *Lowthiane*, *Johne Knox*, Mr. *Johne Craig*, and Mr. *David Lindſay*, Miniſteris of the word of God; to ſeirche furth mair ſpeciallie, and to conſider quhat uther ſpeciall pointis or clauſis ſould appertene to the juriſdictioun, privilege and authoritie of the ſaid kirk, and to declair thair myndis thairanentis to my Lord Regent and thré eſtatis of this realme, at the nixt parliament, ſwa that thay may tak ordour thairintill, and authorize the ſamin be act of parliament, as ſall be fund aggreabill to the word of God. *Ja.* VI. *fol.* 12. *act.* 12. 15 *Decemb.* 1567. *Ja.* VI. *fol.* 3. *act.* 2. 20 *Octob.* 1579.

C. XXIV. Plea of kirk landis pertenis to the eccleſiaſticall juriſdictioun.

GIF ony contraverſie or plea happinis to be betwix twa eccleſiaſticall perſounis, touching the propertie and ground richt of ony land or tenement gevin or mortifyit to the kirk in name of fré almons; or gif the defender, beand ane eccleſiaſticall perſoun, hald the land or tenement of the kirk in name of fré almons, albeit the perſewar be ane temporall perſoun; the ſame plea and actioun aucht and ſould be decydit befoir the eccleſiaſticall court: Bot gif ony queſtioun or debait be movit concerning ony landis or tenementis, *viz.* Quhidder the ferme be ane eccleſiaſticall few, or temporall few? the ſame queſtioun and contraverſie aucht and ſuld be decernit in the Kingis court, like as all uther ſiclike actiounis and queſtiounis aucht and ſuld be decydit within the ſamin. *Lib.* 3. *cap.* 22. *De jud. c.* 94.

C. XXV. An eccleſiaſtiaſticall few may not returne thairefter and be temporall few.

ITEM, Gif it be ſufficientlie provin befoir ony competent juge, that ony few is eccleſiaſticall, and pertenis to the kirk, the ſame may in na tyme thaireftir be decernit to be a temporall few; albeit ony partie havand entres thairto, may clame and challenge the ſamin, as pertening to him, to be haldin of the kirk in cheif, payand thairfoir ſervice aucht and wount. *Lib.* 3. *cap.* 30.

C. XXVI: Actiounis of teſtamentis ſuld be decydit befoir the eccleſiaſticall juge:

ITEM, Gif ony thing be objectit aganis ony teſtament or latter will, ſwa that the ſamin is not lauchfullie maid, or that ony thing contenit thairin, or acclamit be ony perſoun be reſſoun of legacie, wes not left in legacie to him; the ſamin actioun and plea aucht and ſuld pertene to the eccleſiaſticall juge, to be determinit and finallie endit be him; becaus all contraverſeis and queſtiounis concerning teſtamentis and latter willis ſuld be decydit befoir the ſpirituall Juge, as Juge competent thairto, be the teſtimonie of divers and ſindrie perſounis, quha was preſent at the teſtament making, conforme to the ordour of law. *Lib.* 2. *cap.* 32. *Item*, All queſtiounis concerning teſtamentis, or legacie, (quhilk is ane part of the teſtament) aucht and ſuld be decydit befoir the eccleſiaſticall juge; and thairfoir the executouris ſuld not anſwer bot befoir the ſaid juge, and may not be compellit befoir the temporall

juge

juge to anſwer, ſuppois the Lordis of counſall have given commiſſioun for that effect, becaus the Lordis may not give juriſdictioun to the temporall juge in ony actioun or caus pertening to the ſpirituall court or juriſdictioun, 10. *Feb.* 1549. *The Laird of* Bas *contra the Lady* Quhittinghame, 2 *t. cap.* 198.

C. XXVII. Beneficiall cauſis pertenis to the eccleſiaſticall Juge.

THE eccleſiaſticall Juge, or Commiſſaris, ar onlie jugeis competent to the richt and propertie of benefices, 23 *Januar.* 1567, *Sir* Adame Louis *contra Mr.* Pa. Creichtoun, *pr. t. c.* 1372. *Item*, The Lordis of ſecreit counſall and ſeſſioun ar na jugeis competent in beneficiall materis, and to knaw upoun the poſſeſſioun thairof; and thairfoir, gif ony perſoun inquietis ane uther, in the bruiking, joiſing or poſſeſſing of ony patronage, perſonage, or uther benefice, the Lordis referris the deciſioun thairof to the ſpirituall Juge, as ordinar thairintill. 11 *Januar.* 1469. *Mr.* James Stewart *contra* David Stewart, 1 *t. c.* 3. *Item*, The Lordis of counſall ar not jugeis competent to decyde or cognoſce upoun the richt of ony benefice betwix eccleſiaſticall perſounis: Nevertheles, gif ony ſpirituall perſoun cauſis ane uther to be denuncit rebell, or put to the Kingis horn, for quhatſumever caus or cauſis, the ſaidis Lordis ar jugeis competent to the reductioun of the ſaid horning. 28 *Junij*, 1498, *Mr.* George Hepburne *contra Mr.* Gavine Douglas, 1 *t. c.* 97.

C. XXVIII. He quha perſewis as executour ſuld perſew befoir the eccleſiaſticall Juge.

GIF ony man, as executor, perſewis ane uther for ane debt awand be him to him that deceiſſit, he aucht and ſuld perſew the ſame befoir the Juge eccleſiaſticall, and not befoir the Lordis of counſall, quha in na wayis ar Jugeis competent. 6 *Junij*, 1498, Patrik Gray *contra the Erle of* Craufurd, 1 *t. c.* 99.

C. XXIX. A kirkman is not Juge to the reductioun of a tak ſet be him.

NA Prelat nor eccleſiaſticall perſoun is Juge competent to the reductioun of ony tak or aſſedatioun ſet be thame; becauſe in that cais thay may not be baith juge and partie, 15 *Julij*, 1532, *Sir* William Ramſay *contra the Priour of* Sanctandrois, 1 *t. c.* 725.

C. XXX. The eccleſiaſticall Juge may not cognoſce upon the propertie of landis.

THE ſpirituall Juge is not Juge competent to decyde or cognoſce upon the ground richt of ony landis, of ony milne or water gang, albeit thay be Juge competent touching the poſſeſſioun thairof. 20 *Novemb.* 1532, *Priour of* Sanctandr. *contra* David Ramſay *of* Culluthie, 1 *t. c.* 727.

C. XXXI. Actiounis of ſpuilzie pertenis not to the juriſdictioun of the kirk.

THE ſpirituall Juge is na wayis Juge competent to ſpuilzie, becauſe ſic actiounis ar civile and prophane; and thairfoir, gif ony ſpirituall man, or his tenentis, beis ſpuilziet of his cornis, gudis or geir, he may not perſew for the ſamin befoir the eccleſiaſticall Juge, 23 *Junij*, --- 1 *t. c.* 1010.

C. XXXII. Anent actiounis civile and prophane.

ANE contract or obligatioun maid of ony civile or prophane mater, ſic as ane aſſedatioun of landis, is underſtand not to be prophane or civile, gif the ſamin be confirmit be the aith or *fide media* of the contrahentis, or ony ane of thame; and thairfoir the partie, albeit he be a temporall man, may be callit and perſewit for fulfilling of the ſamin befoir the ſpirituall Juge, 15 *Junij*, 1542, Margaret Barclay *contra* William Blakhall.---Bot gif ony ſic con-

tract concernis redemptioun of landis or heritage, albeit the ſamin be maid be interpoſitioun of faith of bodie, or ane aith; nevertheles the ſamin is underſtand to be prophane, and thairfoir ſuld be decydit befoir the Lordis of counſall allanerlie. 23 *Novembris*, 1542, 2 *t. c.* 104.

C. XXXIII. Na kirkman may ſit upon blude.

NA ſpirituall or kirk man may perſonallie ſit in judgment in ony criminal actioun, or blude. 25 *Mart.* 1519. 13 *Julij*, 1517, 1 *t. c.* 626.

C. XXXIV. Form of proceſs before the ſpirituall Juge.

ITEM, For eſchewing of expenſis, and troubling of our ſoverane Lordis pure liegis, and alſwa for haiſtie expeditioun and ending of pleyis, it is ſtatute and ordanit, in civile and prophane cauſis, intentit and perſewit at the inſtance of ane perſewar, being ane laick perſoun, aganis a defendar being a Clerk, That the defendar ſall be ſummoundit be his ordinar, or his commiſſare, to a certane day peremptourlie, makand expres mentioun in the ſummondis, of the caus quhairfoir he is ſummondit: Quhilk day being come, the defendar ſall mak litisconteſtatioun; and gif he confeſſis the clame, and that quhilk is askit fra him, he ſall be moniſhit and decernit to mak payment thairof within xv dayis: Bot gif he denyis that quhilk is clamit fra him, the Juge, at his awin diſcretioun, ſall give and aſſigne to the ſaid perſewar ane terme to produce peremptourlie all his probatiounis; the quhilk terme being come, and the ſaidis probatiounis being reſſavit, ane uther terme ſall be aſſignit, at the will and deſyre of the Juge, to the partie defendar, to give in peremptourlie all his exceptiounis and defenſis: The quhilk terme being come, and his ſaidis exceptiounis and defenſis reſſavit, ane terme ſall be aſſignit to conclude the caus, and give ſentence definitive thairintill, gif the caus be knawin, and nathing doubtſum to the Juge: The quhilk premiſſis ſuld be done be the Juge in ſic ſort, that he give and pronounce ſentence in that caus within the ſpace of xl. dayis, to be comptit and reknit fra the executioun of the ſummoundis: And gif the ſaid Juge give not the ſaid ſentence definitive within the ſaid xl. dayis, and failzies be negligence or utherwayis, to do the ſame, or zit admittis ony frivole exceptiounis, and is convict heirof befoir his Juge ordinar, he ſall be and remane thairefter as principall debtour to the partie that ſall happin to complene heiranent. *Ja.* I. *act.* 97. 1 *Julij*, 1426.

C. XXXV. Anent the caſſing, annulling and abrogating of all lawis, canon, civile or municipal, and uther conſtitutiouns contrare to the religioun profeſſit within this realme.

IN the parliament haldin at *Edinburgh* the nynetene day of *April*, the zeir of God 1567 zeiris: The quhilk day the Quenis majeſtie having conſiderit the eſtate of hir Majeſtie's realme that it ſtude at the tyme of hir arrivall furth of *France*, and zit preſentlie ſtandis at; foirſeing alſo the commoun weill of hir countrie greatumlie to be increſſit and eſtabliſhit, be the keiping of the commoun peice and quietnes amangis all hir ſubjectis: And lyke as hir Hienes, ſen hir foirſaid arrivall, hes attemptit nathing contrare the eſtate of religioun, quhilk her Majeſtie fand publictlie and univerſallie ſtanding at hir arrivall foirſaid, quhairby hir Majeſtie is maiſt worthie to be ſervit, honourit and obeyit: Richt ſwa hir Hienes intendis to continew in the ſamin gudnes and governement in all tymes cuming, quhairby all hir gude ſubjectis, profeſſouris of the religioun foir-

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ſaid, ſall have occaſioun to praiſe God for hir gude, happie and gracious governement, and to eraif of God, fra the boddom of thair hartis, that he wald of his infinite gudneſs to proſper and bliſs hir Majeſtie and hir poſteritie, with lang lyfe, gude and happie governement, to reule and regne over thame. And to the effect alſwa that all hir Hienes gude ſubjectis, profeſſouris of the religioun foirſaid, may aſſure thameſelfis to be in full ſuretie thairof, and thair landis, lives, benefices, dignitels, juriſdictiounis, privilegeis, gudis, fame and honouris, in tyme cuming; and with the better will, jeopard and hazard thair lives and gudis in hir Hienes ſervice, aganis all enemeis to hir Majeſtie, and to the commoun weill of this realme, at all tymes neidfull, as thair predeceſſouris hes maiſt franklie done heirtofoir; and that without feir of ony paine, puniſhment, or tinſell of landis, benefices and gudis for profeſſing, exercing and uſing of the ſaid religioun, in tymes bygane and to cum, to be imput unto thame or thair airis, notwithſtanding ony lawis, actis and conſtitutiounis, canon, civile or municipall, or uther quhatſumever ordinance heirtofoir inſtitute in the contrare: And for thair great furetie foirſaid, Our ſaid ſoverane, with the aviſe of the haill thré eſtatis of this parliament, hes thocht neidfull and convenient to diſpens, caſs, abrogat and annull, lyke as hir Majeſtie preſentlie diſpenſis, caſſis, abrogatis and annullis, all and quhatſumever lawis, actis and conſtitutiounis, canon, civile or municipall, with all uther conſtitutiounis and practique penal, introducit contrare to the foirſaid religioun, and profeſſouris of the ſamin: And ordanis thame and thair poſteritie, in all tymes to cum, to be fré and exemit fra all pane corporall, infamé, reproche, depryving fra benefices, dignitie, or offices, or uther cryme or paine quhatſumever, that may be incurrit or imputit to thame be vertew of the ſaidis actis, lawis, ordinances, canon, civile or municipall, and practique, for contravening of the ſamin; renunceand the ſamin, and ſtrenth thairof, in favouris of our ſaidis ſubjectis, to the effect foirſaid. And ſiclyke, the Quenis Majeſtie, of hir authoritie royall grantit to hir be God, with the aviſe of the thré eſtatis foirſaidis, takis to hirſelf, and hir poſteritie, all hir gude ſubjectis, thair benefices, landis, offices, gudis and honouris, to be under hir ſure ſaifgaird, mantenance, protectioun and defence perpetuallie, aganis quhatſumever foirane authoritie, power, juriſdictioun and perſute, be it eccleſiaſticall or temporall; exemand hir foirſaid ſubjectis fra all comperance, ſummoning or obedience pretendit heirefter aganis thame, for the cauſis foirſaidis, be quhatſumever foirane perſoun or uther, pretendand juriſdictioun or authoritie throw thame; willing hir ſubjectis to dwell in perpetuall ſecuritie and quietneſs within this realme, be making of thair maiſt humbill and faithfull obedience to hir Hieneſs and hir poſteritie, in all tymes cuming heirefter allanerlie. Lykeas alſwa, hir Majeſtie (God willing) heirefter in tyme convenient ſall tak forther ordour in all uther pointis concernyng the eſtate of religioun as may beſt ſerve for the glorie of God, commoun weill of this realme, and continewing of commoun peice and quietnes univerſallie amang all hir ſubjectis; commanding thame, and everie ane of thame, in all tymes heirefter, to keip mutuall, perfyte and maiſt hartie kyndnes, lufe, freindſchip and nichtbourheid, ilk ane to utheris, under all hieſt paine and charge that heirefter may follow, for brek-

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ing of this preſent act of parliament, and hir Majeſties maiſt lauchfull commandement. *Ja.* VI. *reg.* 1. *fol.* 21. *act.* 39. 15 *Decemb.* 1567.

C. XXXVI. Anent the aboliſhing of the Pape and his uſurpit authoritie.

ITEM, Our ſoverane Lord, with aviſe of his derreſt Regent, and thré eſtatis of this preſent parliament, ratifyis and apprevis the act under-writtin, maid in the parliament haldin at *Edinburgh* the xxiiij day of *Auguſt*, the zeir of God 1560 zeiris; and of new, in this preſent parliament ſtatutis and ordanis the ſaid act to be as ane perpetuall law to all our ſoverane Lordis liegis in tymes cuming, of the quhilk the tenour followis: *Item*, The thré eſtatis underſtanding that the juriſdictioun and authoritie of the Biſchop of *Rome* callit the Paip, uſit within this realme in tymes bypaſt, hes not onlie bene contumelious to the Eternall God, bot alſo verray hurtfull and prejudiciall to our ſoveranis authoritie, and commoun weill of this realme: Thairfoir it is ſtatute and ordanit that the Biſchop of *Rome*, callit the Paip, have na juriſdictioun nor authoritie within this realme in ony tyme cuming; and that nane of our ſoveranis ſubjectis, in ony tymes heirefter, ſute or deſyre title or richt of the ſaid Biſchop of *Rome*, or his ſect, to ony thing within this realme, under the panis of barratrie, that is to ſay, proſcriptioun, baneiſment, and never to bruik honour, office nor dignitie, within this realme. And the contravenaris heirof to be callit befoir the Juſtice, or his deputis, or befoir the Lordis of the ſeſſioun, and puneiſt thairfoir, conforme to the lawis of this realme. And the furniſaris of thame with finance of money, and purcheſſaris of thair title or richt, or mantenaris and defendaris of thame, ſall incur the ſamin panis. And that na Biſchop, nor uther Prelat of this realme, uſe ony juriſdictioun in tyme cuming, be the ſaid Biſchop of *Rome*'s authoritie, under the paine foirſaid. And thairfoir of new decernis and ordanis the contravenaris of the ſamin, in ony tyme heireftir, to be puneiſt according to the panis of the foirſaid act abone reherſit. *Ja.* VI. *fol.* 5. *act.* 3. 15 *Decemb.* 1567.

C. XXXVII. Anent the meſſe aboliſhit, and puniſhing of all that heiris or ſayis the ſamin.

ITEM, Our ſoverane Lord, with aviſe of his derreſt Regent, and thré eſtatis of this preſent parliament, ratifyis and apprevis the act under-writtin, maid in the parliament haldin at *Edinburgh* the xxiij day of *Auguſt* 1560 zeiris; and of new, in this preſent parliament, ſtatutis and ordanis the ſaid act to be ane perpetuall law to all our ſoverane Lordis liegis in all tymes to cum; of the quhilk the tenour followis: The quhilk day, forſamekle as Almichtie God, be his maiſt trew and bliſſit word, hes declarit the reverence and honour quhilk ſuld be gevin to him; and, be his ſone Jeſus Chriſt, hes declarit the trew uſe of the ſacramentis, willing the ſamin to be uſit according to his will and word; be the quhilk it is notour and perfytelie knawin, that the ſacramentis of baptiſme, and of the bodie and blude of Jeſus Chriſt, hes bene in all tymes bypaſt corruptit be the papiſticall kirk, and be thair uſurpit Miniſteris: And preſentlie, notwithſtanding the reformatioun alreadie maid, according to Godis word, zit thair is ſum of the ſaid Papis kirk that ſtubburnlie perſeveris in thair wickit idolatrie, ſayand meſſe, and baptiſand conforme to the Papis kirk, prophanand thairthrow the ſacramentis foirſaidis, in quiet and ſecreit placis, thairthrow nouther regaird-

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and God, nor his word: Thairfoir it is ſtatute and ordanit in this preſent parliament, that na maner of perſon or perſonis, in ony tyme cuming, adminiſtrat ony of the ſacramentis foirſaidis, ſecreitlie, or ony uther maner of way, bot thay that ar admittit, and havand power to that effect. And that na maner of perſon nor perſonis ſay meſſe, nor zit heir meſſe, nor be preſent thairat, under the paine of confiſcatioun of all thair gudis, moveabill and unmoveabill, and puniſhing of thair bodyis, at the diſcretioun of the Magiſtrat, within quhais juriſdictioun ſic perſonis happinis to be apprehendit, for the firſt fault; baniſhing of the realme, for the ſecund fault; and juſtifying to the deith, for the third fault. And ordanis all Schireffis, Stewartis, Bailleis, and thair Deputis, Proveſtis and Bailleis of burrowis, and utheris Jugeis quhatſumever within this realme, to tak diligent fute and inquiſitioun within thair boundis, quhair ony ſic uſurpit miniſterie is uſit, meſſe ſaying, or thay that beis preſent at the doing thairof, ratifyand and approvand the ſamin, tak, and apprehend thame, to the effect that the panis above writtin may be execute upoun thame: And thairfoir of new decernis and ordanis the contravenaris of the ſamin, in ony tyme heireſter, to be puneiſt according to the panis of the afoirſaid act abone reherſit. *Ja.* VI. *reg.* 1. *fol.* 10. *act.* 5. 15 *Decemb.* 1567.

C. XXXVII. The puniſhment of hereticks.

ITEM, Anentis heretickis and Lollardis, That ilk Biſchop ſall gar inquire to the inquiſitioun of hereſie, quhair ony ſic beis fundin, and that thay ſall be puniſſit as law of halie kirk requiris; and, gif it miſters, that ſecular power be callit, in ſupport and helping of halie kirk. *Ja.* I. *fol.* 6. *act.* 31. 12 *Mart.* 1424.

C. XXXIX. That houſhaldaris have bybills and pſalme buikis.

ITEM, It is ſtatute and ordanit be our ſoverane Lord and his thré eſtatis in this preſent parliament, that all gentilmen, houſhaldaris, and utheris, worth 300 markis of zeirlie rent or abone, and all ſubſtantious zemen of burgeſſis, likewiſe houſhaldaris, eſtemit worth 500 pundis in landis or gudis, be haldin to have ane bybill and pſalme buik in vulgair language in thair houſis, for the better inſtructioun of thameſelfis, and thair famileis, in the knawlege of God, within zeir and day efter the dait heirof, ilk perſoun under the pane of ten pundis; and that the Proveſt and Bailleis of ilk burgh, and ſic perſoun in everie parochin to landwart as ſall have the Kingis commiſſioun, ſeirche, inquire and try quha failzeis herin; and thay being convict thairof, to uptak the ſaid pane of everie ane that failzeis, the third part to thame ſelfis for thair panis, and the twa part to the help and releif of the pure of the parochin. *Ja.* VI. *fol.* 4. *act.* 6. 20 *Octob.* 1579.

The names of the prelacies within Scotland.

Archbiſchoprikis.	Abbacies.		Prioreis.
Sanctandrois.	*Ferne.*	*Jedburgh.*	*Bewlie.*
Glaſgow.	*Kinlos.*	*Kelſo,*	*Monymusk.*
	Deir.	*Culroſs.*	*St. Mary ile.*
Biſchoprikis.	*Coupar.*	*Icolmkill.*	*Straphillane.*
Dumblane.	*Newabbay.*	*Scone.*	*Ardchattane.*
Aberdene.	*Halywod.*	*Paiſlay.*	*Portmook.*
Roſs.	*Dundrenane.*	*Balmerinoch.*	*Charterhous.*
Orknay.	*Glenluce.*	*Lundoris.*	*Coldinghame.*
Galloway.	*Toungland.*	*Dumfermling.*	*Pluſcardin.*
Iles.	*St. Colmiſinche.*	*Dryburgh.*	*Pettinweme.*
Dunkeld.	*Haliruidhous.*	*Melros.*	*Quhitherne.*
Murray.	*Aberbrothok.*	*Corſragwell.*	*Reſtenneth.*
Caithnes.	*Cambuskynneth.*	*Kilwynning.*	*St. Androis.*
Brechin.	*Newbottle.*		Nunreis.
Argyll.			*Hadingtoun.*
			Eccliſ.
			Elcho.
			Senis.
			North Berwick.

Reparatioun of the kirk.

C. XL. Anent the reparrelling and uphalding of paroche kirkis and kirk zairdis, for buriall of the dead.

IT is ſtatute and ordanit, for uphalding and reparrelling of paroche kirkis, and kirk zairdis of the ſamin, for buriall of the deid within this realme, that the Lordis of ſecreit counſall put ordour thairto, and aviſe and conſult how the ſamin ſall be done and uphaldin in tymes to cum; and quhatſumever ordour that thay ſall happin to tak, for reparrelling and uphalding of the ſaidis kirkis, and kirk zairdis thairof, the Quenis majeſtie, with the aviſe of the thré eſtatis of this realme, in this preſent parliament, hes declarit, and declaris, that quhatſumever ordour beis maid and ſet furth be the ſaidis Lordis of ſecreit counſall, and executioun to be declarit be thame thairupon, to be ſufficient, and of als great ſtrenth and effect as and the ſamin had bene expreſſlie contenit in this preſent act. *Mar. Reg. fol.* 174, *act.* 11. 4 *Junij*, 1563.

C. XLI. Anent the reparatioun of paroche kirkis.

FORASMEKLE as thair was ane act maid in the parliament haldin in the moneth of *Junij* 1563, declarand that quhatſumever ordour ſuld be maid and ſet furth be the Lordis of ſecreit counſall, for uphalding and reparrelling of kirkis and kirk zairdis, and the executioun to be declarit be thame thairupon to be ſufficient, and to have als great ſtrenth and effect as gif the ſamin had bene expreſſlie contenit in the ſaid act of parliament, as the ſamin at mair lenth proportis: According to the quhilk, ane act of ſecreit counſall was maid, for the bigging, mending and reparatioun of paroche kirkis, of the dait, at *Striviling* the xiij day of *September*, the zeir of God foirſaid: Quhilk act as zit hes not tane executioun in na place, becaus of the ſleuth and unwillingnes of the parochineris,

quhilk

quhilk war ſlaw, and refuſit to cheis perſounis to taxt thair nicht-bouris; and that alſwa thair war not kirk-maiſteris nor deaconis appointit in the parochinis to reſſave the taxatioun appointit: For remeid quhairof, our ſoverane Lord, with aviſe of my Lord Regentis Grace, the thré eſtatis, and haill bodie of this preſent parliament, ratifyis and approvis the foirſaidis actis of parliament and of ſecreit counſall, in all pointis; with this additioun: That quhair the parochineris being requirit to elect and cheis perſounis for making of the taxatioun to the effect foirſaid, and gif thay refuſe or delayis, or quhair thair is na kirk-maiſteris nor Deaconis appointit, that then the Archbiſchop, Biſchop, Superintendent, or Commiſſionar of the kirkis, in tyme of thair viſitatioun, quhilk ſall be betwix and the firſt day of *Junij* nixt to cum, ſall, at thair diſcretioun, nominat and appoint perſounis in everie parochin, for making and ſettling of the taxatioun, as alſo for reſſaving of the ſamin: And decernis and declaris the ſaid nominatioun and appointment to be ſufficient, and ſic like executioun ſall pas for compelling of thame, as micht have bene gevin and grantit be vertew of the ſaid act of ſecr cit counſall, in cais thay had bene electit be the parochineris. And becaus thair hes bene divers paroche kirkis within this realme demoliſhit, caſſin doun and deſtroyit for the maiſt part, and that certane particular perſounis hes applyit the ſtanes, tymber and uther graith pertening thairto, to thair awin particular uſe and profite: Thairfoir ordanis ony ane of the parochineris of ſic kirkis to gif thair complaint to the Archbiſchop, Biſchop, Superintendent or Commiſſionar thairof, upon ſic perſounis as thay pleis to complene upon; and thay being lauchfullie callit, and juſt tryall being takin in the ſaid mater, and according to ſufficient probatioun to be led and deducit thairintill, that the ſaid Archbiſchop, Biſchop, Superintendent or Commiſſionar pronounce and give furth thair decreit thairintill: Quhilk decreit our ſoverane Lord, with aviſe of his ſaid derreſt Regent and thré eſtatis foirſaidis, decernis and declaris to be als ſufficient as and the ſamin war gevin befoir ony Judge ordinar. And ordanis the Lordis of counſall and ſeſſioun to direct letteris of horning or poinding thairupon, at the will and pleaſure of the partie quhilk ſall happin to complene. And ſiclike, our ſaid ſoverane Lord, with aviſe of his ſaid Regent, thré eſtatis and haill bodie of this preſent parliament, ordanis the parochineris of the paroche kirkis within this realme, to furneis breid and wyne to the communioun, how oft the ſamin ſall be miniſtrat within the ſamin kirkis. *Ja.* VI. *reg.* 3. *fol.* 12. *act.* 11. 28 *Aug.* 1571.

C. XLII. The teindis may be ſequeſtrat for reparatioun of the kirk.

THE teindis and dewteis of the parochin may be ſequeſtrat and arreſtit be the authoritie of ane Judge ordinar, in the parochineris or tenentis handis, unto the tyme the Prelate or Perſoun repair and reparrell the kirk, ſwa far as concernis his part. 17 *Julij*, 1540. 29 *Julij*, 1558. *N.* contra *the parochineris of* Aytoun, 1 *t. c.* 149.

C. XLIII. Anent the zouth and utheris bezond ſey ſuſpectit to have declynit fra the trew religioun.

ITEM, Becaus ſindrie of the zouth of this realme, paſſand to the partis bezond ſey, becumis corrupt in religioun, quhairupoun greit inconvenient may follow: Thairfoir it is ſtatute and ordanit, that all perſounis, the ſonis of nobillmen, gentillmen or utheris, pretending the caus of thair depairture to be for attening to farther knaw-

knawlege in letteris, ſall, befoir thair departure, ſute and obtene the Kingis Majeſteis licence to that effect, contening ane proviſioun that thay ſall remane conſtant in the profeſſioun of the trew religioun publictlie preichit, and be law eſtabliſhit, within this realme, and do nor procure nathing to the prejudice thairof, or of his Hienes and his authoritie, under the pane of barratrie. And alſwa, the ſaidis perſounis, within the ſpace of twentie dayis efter thair returnyng within this realme, ſall pas to the Biſchop, Superintendent or Commiſſionar of the kirkis within the boundis quhair thay arrive, or happinis to mak reſidence, and thair offer to mak and give the confeſſioun of thair faith, according to the trew and Chriſtian religioun preichit, and be the law eſtabliſhit within this realme; or than, within fourtie dayis thairefter, devoid and remove thameſelfis out of this realme; quhairin gif thay failzie, that thay be admoniſhit and perſewit as the adverſaris of the ſaid trew religioun. And for ſic perſounis as are alreddy furth of this realme, and hes declynit fra the trew religioun, that the ordour appointit in the lawis alreddy maid, be uſit and execute aganis thame, according to the directioun and tenour thairof in all pointis. *Ja.* VI. *fol.* 4. *act.* 4. 20 *Octob.* 1579.

C. XLIV. Anent double confirmatioun of ſewis of kirk landis haldin immediatelie of the King.

FORSAMEKLE as it is ſtatute and ordanit be act of parliament maid in our ſoverane Lordis derreſt motheris time, that na inſeftment of kirk landis ſet ſen the viij day of *Marche*, the zeir of God 1558 zeiris, ſould be of ony force or effect, without the ſamin war dewlie and lauchfullie confirmit be our ſoverane: And als, forſamekle as it happinis that double infeftmentis of few ferme, of ane portioun of land, is gevin be ane eccleſiaſticall perſoun to divers perſounis, and ſumtimes be divers eccleſiaſticall perſounis, to wit, the predeceſſour and ſucceſſour, to divers perſounis in few ferme, and zit nouther of the ſaidis infeftmentis can tak effect, or be of availl, without thay be dewlie and lauchfullie confirmit be our ſoverane Lord: And alſwa, it is oftymes ſene, that confirmatiounis are grantit of baith the ſaidis divers infeftmentis, at divers times, be the ſute of the parteis: Like as it is fundin be ſindrie ordinances of the privie counſall, that our ſoverane Lord, and his Hienes compoſitouris aucht not to deny his confirmatioun, upon the reſonabill expenſis of the partie ſuitand, upoun thair awin perrel. And likewayis, divers alienatiounis of landis, haldin immediatelie of our ſoverane Lord, being maid be ane perſoun to divers perſounis, double confirmatiounis are grantit be our ſoverane Lord thairto; quhairas ane of the ſaidis confirmatiounis aucht and can onlie tak effect in all the clauſis abone ſpecifyit. And notwithſtanding it is the occaſioun of greit debait amangis the liegis, to thair greit expenſis, als weill in payment of thair compoſitiounis, as that the ſamin breidis the occaſioun of great pley: For remeid thairof, it is concludit, ſtatute and ordanit, be our ſoverane Lord and thré eſtatis of parliament, That quhaſaevir obtenis, or hes obtenit, the firſt confirmatioun of ony infeftment, outher of kirk landis or uther landis, haldin of our ſoverane Lord, that the firſt confirmatioun ſall be of availl, force and effect, and ſall prevaill the ſecund; the ſaid firſt infeftment quhilk is confirmit, being vailzeable in the ſelf, and lauchfullie done: And in this cace the laſt confirmatioun ſall not be

be reſpectit, albeit the ſamin confirme the firſt infeftment; bot the firſt confirmatioun of the laſt infeftment ſall prevaill the laſt confirmatioun of the firſt infeftment, be way of exceptioun or reply, without ony ſummoundis or proces of reductioun. It is alwayis provydit, that gif the principall infeftment firſt confirmit, or ony uther ſubſtanciall caus, by the foirſaid confirmatioun, be of nane availl, or unlauchfullie maid to the prejudice of ony uther partie, havand entres to the landis thairin contenit, and quha may be excludit be reſſoun of the firſt confirmatioun, the ſaid partie havand entres ſall be hard to accuſe or reduce the ſaid infeftment firſt confirmit, or utherwayis to move actioun aganis the ſamin as accordis of the law, quhidder thay have obtenit confirmatioun of thair infeftment or not. It is alſwa ſtatute and ordanit, that na doubill confirmatiounis of infeftmentis of kirk landis or utheris, haldin of our ſoverane Lord, be grantit heirefter; and diſchairges the keiparis of the ſignet, privie and great ſeillis, that thay pas not doubill confirmatiounis; and gif the ſaidis doubill confirmatiounis pas in tyme cuming, our ſaid ſoverane Lord, with aviſe of his ſaidis thré eſtatis, decernis and declaris the laſt confirmatioun to be of nane availl; provyding as is abone ſpecifeit. *Ja.* VI. *fol.* 2. *act.* 6. *25 Julij*, 1578.

C. XLV. Diſcharge of mercattis, and labouring on Sabboth-dayis, or playing and drinking in tyme of ſermon.

ITEM, Forſamekle as it is ſtatute and ordanit be a gude and a godlie act, maid in the dayis of King *James* the fourt, our ſoverane Lordis grandſchir, of worthie memorie, that thair be na mercattis nor fairis haldin upon halie dayis, nor zit within kirkis or kirk zairdis upon halie dayis or uther dayis, under the pane of eſchetting of the gudis: Quhilk act, our ſoverane Lord, and his thré eſtatis ratifyis and approvis, and ordanis the ſame to have effect and executioun in tyme cuming, And ſeing that the ſabboth day is now commounlie violat and brokin, als weill within burgh as to landwart, to the greit diſhonour of God, be halding and keiping of the ſaidis mercattis and fairis on *Sondayis*, uſing of handie labour and working thairon, as on the remanent dayis of the oulk, and be gaming and playing, paſſing to tavernis and ailhouſis, and wilfull remaning from thair paroche kirk in tyme of ſermon or prayeris on the *Sonday*. Thairfoir his Majeſtie, and thré eſtatis in this preſent parliament, ſtatutis and ordanis, that thair be na mercattis nor fairis haldin upoun the *Sonday*, nor zit within kirkis or kirk zairdis, that day or ony uther day, under the pane of eſcheitting of the gudis, to the uſe of the pure within the paroche: And ſiclike, that na handie labouring nor working be uſed on the *Sonday*, nor na gaming and playing, paſſing to tavernis and ailhouſis, or ſelling of meit or drink, or wilfull remaning fra thair paroche kirk in tyme of ſermon or prayeris on the *Sonday*, be uſit under the panis following: That is to ſay, of everie perſoun for the handie labouring and working commounlie uſit be the pureſt ſort, ten ſchillingis; and for gaming, playing, paſſing to tavernis and ailhouſis, ſelling of meit and drink, and wilfull remaning from thair paroche kirkis in tyme of ſermon or prayeris on the *Sonday*, of everie perſoun tuentie ſchillingis, to be applyit to the help and releif of the pure of the parochin. And in cace of the refuſe, or inhabilitie of ony perſoun offending in the premiſſis, to pay the ſaidis panis re-

reſpective, preſentlie and indilayitlie upoun thair apprehenſioun or convictioun, efter lauchfull tryall, he or ſche ſall be put and haldin in the ſtokkis, or ſic uther ingine devyſit for publict puniſhment, be the ſpace of twentie four houris. And for executioun heirof, the Kingis Majeſteis commiſſioun of juſticiarie ſall be grantit to ſum perſoun in everie parochin beſt affectit and maiſt abill to performe the ſame, at the requeiſt of the Miniſter. *Ja.* VI. *fol.* 4. *act.* 3. 20 *Octob.* 1579.

Of Baronis.

C. I. The aith of a Baron.

I B. becumis zour man, as my liege King, in land, life, lith, lymme, and warldis honour, homage, fealtie and lautie, aganis all that live and die may; zour counſall celand that ze ſchaw to me; the beſt counſall ſchawand zou, gif ze chairge me; zour ſkaith nor diſhonour not to heir nor sé, bot I ſall let it at all my gudlie power, and ſall warne zou thairof. Swa help me God. *Form. juram. pag.* 379.

C. II. The maner of halding Baron conrtis.

It is to wit and be rememberit, that firſt and formeſt, quhair Baron courtis ſould be haldin, thair aucht till appeir within ane certane place, within the lordſchip of the baronie that is callit the *Chemyis*, the Bailzie, with ſufficient power, be lettre and ſeill of him in quhais name he haldis the court, with his Clerk and Serjand, with lauchfull and ſufficient ſuitaris; and then aucht the Clerk to title the court, makand mentioun of the day, zeir and ſteid, quhan and quhair the Court is haldin, with the dait of the zeir of our Lord, ſayand, Befoir ſic ane feiſt, ſic ane day, and ſic ane moneth; and than aucht the Serjand to call the ſuitaris anis ſimply, in the firſt the out-ſuitaris of the court, gif thair be ony, and ſyne the in-ſuitaris; and quhen thay ar all anis callit throw, the Court aucht to be defendit be the Serjand, in this maner: I defend and forbid, in our liege Lord the Kingis behalf of *Scotland*, and on the Lordis behalf, that the court aw, that na man tak ſpeiche in hand for ony uther man without leive askit and gevin, nor trouble this court unlauchfullie under the pane that may follow. Then ſall the Serjand call the ſuitaris agane, and default the abſentis that ar not lauchfullie eſſonzeit, and gar a ſuitar of the court dome thame in ane unlaw, efter the courſe of law; and quha is defaultit, the Bailzie ſall give command to the Serjand to gang with witneſſis to the hous of him that maid the default, to tak ane diſtres for the default, and let it to borgh to him to enter in the nixt court, to ſaif the ſamin, gif he may. And this done, the Clerk aucht to reid the rolment of the court nixt beand befoir, and all his rollis throwch to reid and to clenge; and quhat cauſis war thair left laſt dependand and unendit, gar thame firſt be determinit: And efter the rolment of the court befoir be clengit and endit, the Serjand aucht to preſent attachiamentis and borgh-rowis that ar fundin in his handis, be him lauchfullie maid; and he aucht to preſent thame firſt that firſt ar fundin in his handis; for the law ſayis, he that firſt knittis and bindis him to the law, firſt aucht to be hard in court, and (of law) ſervit befoir the Juge: And fra thay be ſa preſentit to the Bailzie with lauch-

full

full witneſſis, then aucht he, in his court, thame to handle and ſteir as law will; and then the Clerk aucht to inroll thame formallie, ſwa that efterwart thay be haldin in freſh mynd, as the cours of the court rinnis, fra court to court, quhill the mute be endit be dome and executioun of law. And it is to wit, that gif ony man aucht thré ſuitis, he ſall compeir at thré heid courtis in the zeir, that is is to ſay, the law day efter *Michaelmas*, the law day efter *Zule*, and the law day efter *Paſche*. *Mod. tenen. cur. bar. c.* 1. *Item*, touching the ordour of halding of baron courtis in criminall cauſis, it is ſtatute that all Baronis, in thair courtis of criminall cauſis, uſe, keip and obſerve the ſamin forme and ordour of proces quhilk the Kingis Juſtice dois keip in his juſtice-courtis; as ſall be afterwart declairit in the awin place. *Rob.* III. *ex lib. Sconen.*

C. III. All Baronis ſould have pit and gallows.

ALL Baronis havand power of pit and gallows for thift and ſlauchter, ſould have pit and gallows: And quhaſaever hes pit and gallows for thift, is underſtand to have pit and gallows for manſlauchter; and gif in the baron court it happinis, (tuiching the ſaidis crymis) ony appeill or anſwer be betwix parteis to ſingular combat, it is not leaſum to the Baron to mak aggreance or concord betwix thame without licence of the King. *Quon. attach. c.* 61. *Aſſiſ. reg. Da. c.* 16.

C. IV. In quhat maner Baronis may puniſh thift.

THAIR is ſum Baronis quha hes privilege and libertie of infang thift and outfang thift, quha thairfoir hes power to ſit and give dome, in thair courtis, upon all theives tane and apprehendit in manifeſt thift, ſicas hand-havand and back-beirand, within thair baronie, boundis or libertie: And gif the theif be not tane with the reid hand, or gif he be not apprehendit havand in his poſſeſſioun the thing that is thiftuouſlie ſtollin, albeit he be followit and perſewit as ane theif be ony man, zit the Baron hes na power to ſit or cognoſce upon ſic thift, nor zit may he put it to the knawlege of ane inqueiſt, quhidder ſic man, quha is not takin in poſſeſſioun of ſic thift, be culpable and giltie or not. And is to wit, that Baronis havand libertie of infang thift, may dome and cognoſce upon all theivis, beand of thair awin tenentis, men or ſervandis, takin with reid hand of thift, and havand the ſamin in thair poſſeſſioun: And ſiclike, all Baronis havand the power of outfang thift, hes gude richt and power to judge all theivis, quha beand ony uther manis or Baronis ſervand-man, or tenent, and cumand furth of his maiſteris ground, or ony uther place, to the ſaid Baronis ground, boundis or baronie, committis ony thift, and is tane in poſſeſſioun thairof within the ſaid boundis and baronie; the quhilk theif, beand ſa apprehendit within the baronie, may be adjugit be the Lord and Baron thairof, havand power thairto. Bot gif ony theif committis thift within ony landis or baronie, and eſcapis frie furth of the ſamin, it is not leaſum to the Baron of the ſame baronie to reduce and bring him agane, and judge him, be reſſoun of his privilege or libertie, quhidder he be his awin proper man or not; for ane Baron may judge and juſtifie all ſic theivis allanerlie, quha beand his awin men, or ony utheris men, ar takin and apprehendit within his fredome and juriſdictioun with reid hand, and in poſſeſſioun of the thing thiftuouſlie ſtollin. *Erſk. pag.* 296.

ITEM,

C. V. Baronis may puniſh treſpaſſouris.

ITEM, It is to wit, that all Baronis may thryſe in the zeir clenge and purge his landis of miſdoaris and malefactoris, and utheris that are of evill fame, be ane inqueiſt of leill and lauchfull men; be the quhilk inqueiſt na man may be condemnit bot thay that gave thairuntill thair conſent. *Quo. attach. c.* 24. *Mod. ten. cur. bar. c.* 41.

C. VI. Baronis may not hald courtis of lyfe and lymme, without the Kingis Schireff.

It is ordanit be the King that na Baron, or uther fréhalder, thocht thay have court of lyfe and lymme, hald ony ſie courtis, nor zit of ſingular battel, water or irne, bot gif the Kingis Schireff be thair, or his Serjand. *Quon. attach. c. ult. ſtat. Alex. ult.*

C. VII. Baronis ſould have ſeillis.

It is ſtatute and ordanit, that all Baronis, and utheris haldand landis of the King in chief, ſall have an proper ſeill of armis, to ſerve the King in courtis, as thay ar obligit to do of the law; and he that hes not ane, ſall fall thairby in the Kingis amerciament, without remiſſioun, be dittay befoir the Juſtice. And the ſeill ſould be of ane greit and ſufficient quantitie, and not little ſignetis or ſtampis. *Ro.* III. *cap.* 1.

C. VIII. Bludwitis pertenis to Baronis.

ITEM, Gif ane man of ony Baronis landis or baronie, draw blude of ony perſoun, quhaſaever he be, he ſall be attachit to the Baronis court, and be amerciat thairfoir. *Stat. Will. cap. ult. ex lib. purres.*

C. IX. Quhat Baronis may cognoſce of blude.

Ane Baron beand infeft in baronie, with tenentis, tenandreis, and with blude, is Judge competent, and hes gude richt and power to ſit and cognoſce upoun all actiounis of blude, gif the committar or doar of the blude did the ſame within the baronie, or within the boundis of ony pertinent or pendicle thairof, and was takin reid hand with the blude; and the Schiref of the ſchyre within the quhilk the baronie lyis, is on na wayis Judge competent heirintill. 8 *Julij*, 1535, George *Lord* Seytoun *contra the Schiref of* Linlithgow. And ſiclike, the ſaid Baron may replege fra the Schiref and his deputis, all ſic actiounis, as ſaid is. 27 *Junij*, 1553, 1 *t. c.* 476.

C. X. Baronis privilege in poinding thair tenentis.

Ane Baron or frehalder, havand power to hald court, may call and perſew his tenent, or his cautioner and ſovertie, beand lykwayis his tenent, befoir his awin court, haldin in his awin ground, for the maillis, fermis and dewteis auchtand to him be the ſaid tetent. And gif the tenent beis fundin auchtand to him the ſamin, and decernit to mak payment thairof, ane precept of poinding may be direct be his Baillie, conforme to the decreit, for poinding of the ſaid tenent, principall debtour, or cautioner, thair gudis and geir. And gif the Officiar pas at command of the ſaid precept, and apprehend the ſaid gudis and geir pertening to the ſaid tenent or to his cautioner, upon the ſaid Baronis land or ground, and be certane compryſouris ſworn to that effect, lauchfullie poindis and compryſis the ſamin, and offeris thame to the awner thairof, for the prices for the quhilk thay ar compryſit, and he refuſand to reſſave the ſamin, deliveris and aſſignis thame to the ſaid Baron or frehalder for payment of the ſaid decreit; the ſaid Officiar, Baron nor frehalder ſall never be callit in tyme cuming for ony ſpuilzie or wrangous in-

intromiſſioun with the ſaidis gudis, albeit he uſit na farder ſolemnitie, in poinding and appriſing thairof, nor is abone expremit. 2 *April*, 1569. 22 *Junii*, 1569. *Andro Gray* contra *Thomas Watterſtoun of that ilk.* 1 *t. c.* 871.

C. XI. Liquidatioun of prices of fermis.

ANE Baron, in his awin court, may liquidate the prices of his fermis, auchtand to him be his tenentis, and may poind and appriſe the tenentis gudis or geir thairfoir, gif he refuſis or delayis to mak payment of the ſamin. 24 *Novemb.* 1570, *Allaſter Kid* contra *Thomas Haliburtoun*, 1 *t. c.* 1364.

C. XII. Baronis may ask counſall fra the Kingis court.

QUHEN ony actioun or caus dependis befoir ane Baron in his court, and ony doubt aryſis thairanent, quhilk may not be exponit be the ſaid Baron nor his Baillie, then the Baron may ask counſall and aviſe with the King and his counſall thairanent; for the King aucht and ſould give his counſall, and alſwa caus his wiſe counſallouris do the ſamin to his Baronis in all ſic cauſis. And efter that the Baronis are certifyit be the Kingis counſall anent all ſic doubtis and contraverſeis, thay may return all ſic actiounis and contraverſeis in the quhilk the ſaid doubt did aryſe, and finallie end the ſamin in thair awin court. *Lib.* III. *c.* 20. *De judic. c.* 60. *Quon. attach. c.* 88.

C. XIII. Ratificatioun of the Baronis privilege.

ITEM, Our ſoverane Lord, with aviſe and conſent of his derreſt Regent, and thré eſtatis of this preſent parliament, hes ratifyit and apprevit all privilegeis and liberteis grantit and gevin to the Nobilitie and Baronis of this realme, and actis of parliament maid in thair favouris; and ordanis the ſamin to be put to executioun in all pointis, efter the forme and tenour thairof. *Ja.* VI. *fol.* 20. *act.* 32. 15 *Decemb.* 1567.

The names of the Erlis and Lordis in Scotland.

Erlis.

Erle of *Arrane*, Lord *Hamiltoun*.
Erle of *Angus*, Lord *Douglas* and *Abernethy*.
Erle of *Orknay*.
Erle of *Huntlie*, Lord *Gordoun* and *Badzenoch*.
Erle of *Gowrie*.
Erle of *Argile*, Lord *Campbell* and *Lorn*.
Erle of *Murray*.
Erle of *Crawfurd*, Lord *Lindſay*.
Erle of *Athole*, Lord *Balveny*.
Erle of *Errol*, Lord *Hay*, Conſtable.
Erle *Mariſchall*, Lord *Keith*.
Erle *Caſſillis*, Lord *Kennedie*.
Erle of *Glencairne*, Lord *Kilmauris*.
Erle of *Eglintoun*, Lord *Montgomerie*.
Erle of *Mar*, Lord *Erskine*.
Erle of *Montroſe*, Lord *Grahame*.
Erle of *Rothes*, Lord *Leſlie*.
Erle of *Caithnes*.
Erle of *Sutherland*.
Erle of *Menteith*.
Erle of *Buchane*.

Lordis.

Lord *Home*.
Lord *Seytoun*.
Lord *Somervill*.
Lord *Maxwell*.
Lord *Carleill*.
Lord *Boyd*.

Lordis.

Lord *Sempill.*
Lord *Flemyng.*
Lord *Zeſter.* *Hay.*
Lord *Borthwick.*
Lord *Sanquhar.* *Creychtoun.*
Lord *Hereis.* *Maxwell.*
Lord *Cathcart.*
Lord *Uchiltrie.* *Stewart.*
Lord *Halkket.* *Roſs.*
Lord *Levingstoun.*
Lord *Elphinstoun.*
Lord *Oliphant.*
Lord *Ruthven.*
Lord *Sinclair.*

Lord *Ogilvie.*
Lord *Forbes.*
Lord *Lovat.* *Fraſſer.*
Lord *Drummond.*
Lord *Methven.* *Stewart.*
Lord *Lindſay* of the *Byris.*
Lord *Gray.*
Lord *Glamis.* *Lyon.*
Lord *Innermeith.* *Stewart.*
Lord *Saltoun.* *Abernethy.*
Lord *Spynie.* *Lindſay.*
Lord *Thirlſtan.* *Maitland.*
Lord *Newbottle.* *Ker.*
Lord *Urquhart.* *Seytoun.*

Magiſtratis. Burrow lawis.

C. I. Aith of Proveſt and Ballies.

THE Proveſt and Balleis ſould be choſin at the nixt court efter *Michaelmas*, be the commoun counſall of the burgh, quha are faithfull men, and of gude fame; and thay beand choſin, thay ſweir that thay ſall be leill and trew to the King, and to the haill communitie of the burgh; that thay ſall keip the lawis and conſuetudes of the burgh; that thay ſall do juſtice to rich and pure in lyke maner efter thair knawlege; thay ſall not hald law on ony man or woman, nor ſpair ony perſoun, for haitred, favour, nor dreid, blind, budde, nor feare of ony man, bot be the ordinance, counſall and judgment of gude and wiſe men of the burgh. *Leg. burg. cap.* 74. *ſtat. gild. c.* 54.

C. II. Electioun of Officiaris.

ITEM, Tuiching the electioun of Officiaris in burrowis, as Aldermen, Balleis and uther Officiaris, becaus of greit contentioun zeirlie for the cheſing of the ſamin, throw multitude and clamour of commounis ſimpill perſounis; it is thocht expedient that na Officiaris nor counſall be continewit efter the Kingis lawis of burrowis, forther than ane zeir; and that the cheſing of the new Officiaris be in this wyſe, that is to ſay, the auld counſall of the town ſall cheis the new counſall, in ſic number as accordis to the town; and the new counſall and the auld, in the zeir foirſaid, ſall cheis all Officiaris pertening to the town, as Alderman, Baillies, Dene of Gild, and uther Officiaris; and that ilk craft ſall cheis a perſoun of the ſamin craft, that ſall have voit in the ſaid electioun of Officiaris for the tyme, in lykewayis zeir be zeir. And attour, it is thocht expedient, that na Captane nor Conſtabill of the Kingis caſtellis, quhat town that ever thay be in, ſall beir office within the ſaid town, as to be Alderman, Ballie, Dene of Gild, Theſaurare, na nane uther Officiar that may be choſin be the town, fra the time of the nixt cheſing furth. *Ja.* III. *fol.* 52. *act.* 37. 20 *Novemb.* 1469.

ITEM,

C. III. Of the perſounis that ſould be choſin, and of the maner of cheſing.

ITEM, It is ſtatute and ordanit, that the act of parliament maid anent the cheſing of Officiaris in burrowis, may be ratifeit and apprevit, and put to executioun, and in tyme to cum be obſervit and keipit; ſa that the electioun of Officiaris micht be of the beſt and worthieſt indwellaris of the town, and not to be partialitie nor maiſterſchip, quhilk is undoing of burrowis, quhair maiſterſchip and requeiſtis cumis. *Ja.* III. *fol.* 78. *act.* 129. 1 *t. Octob.* 1487. *Item*, becaus all our ſoverane Lordis burrowis ar put to povertie, waiſtit and deſtroyit in thair gudis and policie, and almaiſt ruynous throw fault of uſing of merchandice, and that throw being of outlandis men, Proveſt, Ballies and Aldermen within burgh, for thair awin particular weill, in conſumyng of the commoun gudis of burrowis, grantit to thame be our ſoverane Lord and his predeceſſouris, Kingis of *Scotland*, for the uphald of honeſtie and policie within burgh: It is heirfoir ſtatute and ordanit, that na man in tyme cuming be choſin Proveſt, Baillie, or Alderman into burgh, bot thay that ar honeſt and ſubſtantious burgeſſis, merchandis and indwellaris of the ſamin burgh, under the pane of tynſell of thair fredome quha dois in the contrare. *Ja.* V. 122. *act.* 29. 7 *Junij*, 1535.

C. IV. That all Officiaris within burgh be changit zeirlie.

ITEM, That all Officiaris, Proveſtis, Ballies and utheris, havand office of juriſdictioun within burrowis, be changeit zeirlie; and that nane have juriſdictioun, within burgh bot gif thay uſe merchandice within the ſaid burgh. *Ja.* IV. *fol.* 106. *act.* 115. 11 *Mart.* 1503.

C. V. Of him that uſurpis office within burgh.

GIF ony perſoun uſurpis at his awin hand, without fré electioun, and contrare the will of the Proveſt, Ballies, counſall and communitie of ony burgh, the office of the proveſtrie, or ony uther office within the ſamin, and diſponis upon the commoun gude thairof at his pleaſure, he ſall never be admittit or reſſavit to mak reſidence or dwelling within the ſaid burgh, nor to beir office within the ſamin, be ony wayis, bot be excludit thairfra in tyme to cum. 11 *Novemb.* 1528. *The burgh of* Perth *contra* Pat. Charterhous, 1 *t. c.* 344.

C. VI. The Lordis of counſall may diſcharge or deprive Officiaris.

THE Lordis of counſall may remove and diſcharge Proveſt, Ballie, or Officiar, within burgh, and charge the remanent Magiſtratis, counſall and communitie of the burgh to cheis ane uther in his his place, albeit he hes committit na fault in the executioun of office, bot onlie incurrit ſuſpicioun, as favorable to ony partie, not uſand himſelf as an neutrall and commoun Officiar, betwix our ſoverane Lordis liegis. 10 *April*, 1546, *The Lords* contra Olivar Maxtoun *Proveſt of* Perth. 1 *t. c.* 619.

C. VII. That thair be 12 perſounis upon the ſecreit counſall of burrowis.

ITEM, It is ſtatute and ordanit, for the commoun proffeit of all burrowis of the realme, that thair be aucht or twelf perſounis, according to the quantitie of the town, choſin of ſecreit counſall, and ſworn thairto; the quhilk ſall decreit all materis of wrang and unlaw within the burgh, to the availl of fyve or viij pundis, within aucht dayis wairning; ſwa that in prejudice of the innocentis, the delayar have not the privilege of the proceſſis of law, but upon viij dayis

dayis warnyng, to be decidit be the ſaidis perſounis. *Ja.* II. *fol.* 35. *act.* 50. 9 *Junij*, 1455.

C. VIII. That four of the auld counſall be choſin to the new.

ITEM, It is ſtatute and ordanit in burrowis, that notwithſtanding the actis maid of befoir, that thair ſall be of the auld counſall of the zeir befoir, four worthie perſounis choſin zeirlie to the new counſall, at thair entrie, to ſit with thame for that zeir, and have power with thame to juſtice. *Ja.* III. *fol.* 59. *act.* 70. 9 *Maij*, 1474.

C. IX. Aith of thame that ar choſin on the counſall.

IN all burrowis within this realme, twelve ſufficient Burgeſſis that ar maiſt diſcreit and honeſt in the burgh, ſall be choſin to be on the counſall thairof, quha ſall ſweir ſolemnelie that thay ſall keip, and caus to be keipit within the burgh, all the lawis and richteous cuſtumis of the ſamin, *Leg. burg. c.* 110. in this maner following: I ſall give leill and trew counſall to the Proveſt, Ballies, Officiaris, and communitie of the town, and the beſt counſall that I can, quhen I am chargit to give the ſamin. I ſall lelelie and trewlie decyde and decreit all cauſis and materis be thame to me preſentit. I ſall lyne landis lellelie betwix parteis, and nouther ſpair for prayer, feid nor favour. I ſall mantene the Officiaris of the burgh in executioun of thair offices, and miniſtratioun of juſtice. Swa help me God. *Form. juram. c.* 8.

C. X. Of Serjandis within burgh.

THE Serjand of the Burgh ſall be choſin commounly be all burgeſſis, that ar honeſt men and of gude fame, and thay ſall ſweir in plane court that thay ſall be leill and trew to our ſoverane Lord the King, and to the Proveſt, Ballies, counſall and communitie of the burgh, *Leg. burg. c.* 73. and that he ſall lauchfullie mak attachiamentis, and than faithfullie preſent the ſamin in court; and that he ſall lellelie and trewlie exerce and do all and ſindrie thingis pertening to his office, without haitrent, favour, dreid or bryb. *Stat. Gild. c.* 5. *Item*, Gif ony Serjand in the Kingis burgh conſentis to ony falſet, or takis hyre or bryb in hurt or prejudice of the lawis or cuſtumes of the burgh in doing of his office, utherwayis than law would, and is convict thairfoir, he ſall pay ane unlaw of viij *s.* and ſall be depryvit of his office and fie, and be repellit from beiring of witnes in time forth for ever mair. *Leg. burg. c.* 72.

C. XI: Ratificatioun of the privilegeis of burrowis.

OUR ſoverane Lord, with aviſe of his thré eſtatis of this preſent parliament, hes ratifeit and apprevit, and be the tenour heirof ratifeis and apprevis of new, all actis and conſtitutiounis of parliament, maid be quhatſumever our ſoverane Lordis predeceſſouris of befoir, in favouris of the burrowis and burgeſſis of this realme, inhabitantis of all the burrowis of the ſamin, with all privilegeis, fredomes, immuniteis, and liberteis, grantit and gevin to thame, and everie ane of thame; and decernis and declaris the ſamin to have full ſtrenth, force and effect in all times heireſter, ſwa that the ſamin be put to full and dew executioun in all pointis, and to ſtand as ane perpetuall law to thame and thair ſucceſſouris; with this additioun: Gevand thame fredome and privilege to convene four times in the zeir, for ſic materis as concernis thair eſtait; and that, in quhat burgh it ſall be thocht expedient be the maiſt part of the ſaid-

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is burrowis: Provyding alwayis, for eſchewing of tumultis, that thair be preſent at the ſaidis conventiounis, for everie burgh, in number ane, except the town of *Edinburgh* to have ane ma nor the uther burrowis. *Ja.* VI. *fol.* 2. *act.* 5. 4 *July* 1578, *and ratified* 20 *Octob.* 1579. *fol.* 13. *act.* 19.

C. XII. Compt ſould be maid in checkar of the commoun gude.

ITEM, Becauſe all our ſoverane Lordis burrowis ar put to povertie, waiſtit and deſtroyit in thair gudis and policie, and almaiſt ruynous, throw fault of uſing of merchandice, and that throw being of outlandis men, Proveſt, Ballies and Aldermen within burgh, for thair awin particular weill, in conſuming of the commoun gudis of burrowis grantit to thame be our ſoverane Lord and his predeceſſouris, Kingis of *Scotland*, for the uphald of honeſtie and policie within burgh; It is heirfoir ſtatute and ordanit, that all Proveſtis, Ballies and Aldermen of burrowis, bring zeirlie to the checkar, at the day ſet for giving of thair comptis, thair compt bukis of thair commoun gudis, to be ſene and conſiderit be the Lordis auditouris, gif the ſamin be ſpendit for the commoun weill of the burgh, or not, under the pane of tinſell of thair fredome; and that the ſaidis Proveſt, Ballies and Aldermen within burgh, warne zeirlie xv. dayis befoir thair cuming to the checkar, all thay quha lykis to cum for examing of the ſaidis comptis, that thay may argue and impung the ſamin, as thay pleis, ſwa that all murmure may ceis in that behalf. *Ja.* V. *fol.* 122. *act.* 29. 7 *Junij*, 1535.

C. XIII. How the commoun gude of burrowis ſuld be ſpendit.

ITEM, It is ſtatute and ordanit, anent the commoun gude of all our ſoverane Lordis burrowis within the realme, that the ſaid commoun gude be obſervit and keipit to the commoun proffeit of the town, and to be ſpendit in commoun and neceſſare thingis of the burgh, be the aviſe and counſall of the town for the time, and Dekinis of craftis quhair thay ar; and inquiſitioun zeirlie to be tane in the chalmerlane air, of expenſis and diſpoſitioun of the ſamin. *Ja.* IV. *fol.* 93. *act.* 59. 18 *Maij*, 1491.

C. XIV. Anent alienatioun and diſpoſitioun of the commoun gude.

ITEM, Nane of our ſoverane Lordis burrowis hes power to ſell, annalzie, or diſpone perpetuallie, the commoun gude of the burgh, or ony part thairof, nor zit to ſet the ſamin in tak or aſſedatioun, abone the ſpace of thré zeiris, according to the act of parliament, *ult. Feb.* 1491. *The King* contra *the burgh of* Aberdeen. 10 *Feb.* 1491, *The King* contra *the town of* Elgin, 1 *t. cap.* 62. Of the quhilk the tenour followis: *Item*, it is ſtatute and ordanit, anent the commoun gude of our ſoverane Lordis burrowis within this realme, that the rentis of the burrowis, as landis, fiſchingis, fermis, maillis, milnis, watteris, and zeirlie revenewis, be not ſet bot for thré zeiris allanerlie: And gif ony happinis to be utherwayis ſet, that thay be of nane availl, force nor effect in tyme to cum. *Ja.* IV. *fol.* 93. *act.* 59. 18 *Maij*, 1491. Attour, gif ony burgh foirſaid within this realme, annalzeis, diſponis, or dilapidatis the commoun gude of the ſaid burgh, in contrare the commoun weill of the ſamin, the Kingis grace, and his counſall, hes gude actioun and interes to caus the ſamin be reſtorit and redreſſit agane *in integrum. ult. Feb.* 1491. *The King* contra *the town of* Elgin, 1 *t. c.* 62.

C. XV. That na burges be maid without conſent of the greit counſall.

ITEM, It is ſtatute and ordanit, that in tyme to cum na Proveſt, Baillie, nor Alderman of ony townis, mak burgeſſis nor gild-brether, without the conſent of the greit counſall of the town; and that the proffeit, that is tane for the making of ilk burges or gild-brother, be put to the commoun gude, and wairit on the commoun warkis. *Ja.* IV. *fol.* 107. *act.* 121. 11 *Mart.* 1503.

C. XVI. The aith of him that is maid burges.

HE that is maid burges, ſall at the ſamin time ſwere, that he ſall be leill and trew to the King our ſoverane Lord, and to the communitie of the burgh quhairof he is maid burgeſs; that he ſall faithfullie pay to the King his burrow-maill, quhilk he aucht to him for his land (gif he ony have); that he ſall be obedient in all leaſum thingis to the Proveſt and Ballies; that he ſall conſeill the ſecreit counſall of the communitie of the burgh; and gif he knawis thair damnage and ſkaith, he ſall adverteis thame thairof, or remeid the ſamin, gif he may; that quhen that how oft he is requirit for the commoun weill and effairis of the burgh, he ſall give his faithfull counſall and help efter his power, and induring his lyftyme; and efter his micht, he ſall defend and mantene the liberteis, lawis and cuſtumis of the burgh. And efter that he hes maid his aith, he ſall kiſſe the Proveſt and the nichtbouris. *Stat. gild. c.* 49. *Leg. burg. c.* 2.

C. XVII. He that is maid burges ſall pay burrow-maill to the King.

NA man may be burges within the Kingis burgh, bot gif he do the King ſervice, *viz.* gevand to him for ane rude of land, v. *d.* *Leg. burg. c.* 28. for ilk burges, within burgh of royaltie, ſall give to our ſoverane Lord the King, for his burgage that he haldis of his hienes, that is, for ane rude of land, zeirlie the ſowme of v. *d.* *Leg. burg. c.* 1.

C. XVIII. Of him that is maid burges havand ane waſte land.

ITEM, Na man may bruik or joiſe the libertie of ane burges, bot gif he have ane biggit land, and ſtreinzeable within zeir and day etfer his entrie. *Leg. burg. ex libro car.* and thairfoir quhatſumever perſoun is maid new burges, havand allanerlie ane waſte land, and na biggit land occupiet be himſelf, or for hyre ſet to utheris, he ſall not be compellit to pay burrow-maill in the firſt zeir, bot in the ſecund he ſall big his ſaid land; and thairefter, gif it happinis to be waiſtit be weirfair or fyre, and he have ane uther land biggit, he may let that ly waſte until he be of ſufficient power to big the ſamin again: Nevertheles he ſould in the mean tyme pay his burrow-maill thairfoir. *Leg. burg. c.* 29.

C. XIX. Anent beiring, weiring, and ſchuteing of culveringis and daggis within burrowis.

FORSAMEKLE as be act of parliament maid in the firſt zeir of our ſoverane Lordis reigne, it was ſtatute and ordanit, that na maner of perſoun nor perſounis, of quhatſumever eſtait, degré or conditioun, ſchuit with culveringis, daggis, piſtoletis, or ony uther gunnis or ingynes of fire wark, in ony part of this realme, nouther to burgh nor to land, nor beir, weir, nor uſe ony culveringis, daggis, piſtoletis, or ony uther ſic ingyne of fire wark, upon thair perſounis, or in thair companie with thame, privatlie or oppinlie, outwith houſing, without licence of our ſoverane Lord, under the pane of cutting of thair richt hand, and farther panis ſpecifeit in the ſaid act of parliament, as the ſamin at mair lenth proportis,

portis, quhilk hes not bene put to dew executioun in tyme bygane, be reſſoun of the troubillis intervening, and thairthrow mony hes tane occaſioun to beir, weir, and uſe culveringis, daggis, piſtoletis, and uther ingynes of fire wark, within burrowis and uther partis of this realme, quhairthrow divers his Hienes liegis hes bene ſchamefullie and cruellie murtherit, ſlane, and hurt, in redding and utherwayis, quhilkis war abill aneuch to have maid defence ſufficientlie for thame ſelfis, at all tymes of perſute; and ſum part of the occaſioun quhy the ſaid act hes not tane executioun, was be reſſoun of the pane of deith, or demembring, quhilk the ordinar Judges war laith to execute: Thairfoir our ſoverane Lord, and thré eſtatis foirſaidis, ordanis the ſaid act to be newlie publeiſt, and that na maner of perſoun nor perſounis beir, weir, uſe nor ſchuit culveringis, daggis, or piſtoletis within burrowis, or outwith the ſamin, in tyme cuming, utherwayis nor the ſaid act, and exceptiounis thairof proportis, under the pane of ten pundis money of this realme, and the gun and armour thay beir, to be payit be ilk perſoun contraveneand and doand in the contrare, without prejudice of the uther panis, gif the Kingis Majeſtie will have the ſame execute. And for executioun thairof, makis and conſtitutis the Proveſtis, Aldermen and Ballies within burgh, his Majeſteis Juſtices in that part, everie ane within thair fredomes and juriſdictiounis, with power to thame to ſeirche, tak and apprehend the offendaris and contravenaris, and put thame to ane aſſyſe, and, being convict, to hald thame in waird, quhill the pane foirſaid be payit, and to tak ſicker ſovertie of the perſounis convict, to forbeir in tyme cuming, under the doubill of the ſaid pane; and the panis quhilkis beis upliftit, to be imployit to the ſupport of the pure: And this act to ſerve for ſufficient commiſſioun to the ſaidis Proveſtis, Aldermen, and Ballies of burrowis, to the effect foirſaid. *Ja.* VI. *fol.* 15. *act.* 21. 20 *Octobris*, 1579.

C. XX. That Merchandis and burrowis bruke thair auld privilegeis.

ITEM, It is ſtatute and ordanit, that all the Merchandis of the realme, and the burrowis, bruke and have thair auld privilegeis and fredomes grantit and gevin to thame be our ſoverane Lordis progenitouris, of maiſt nobill mynd, be obſervit and keipit to thame; and that na perſounis dwelland outwith burrowis uſe ony merchandice, nor zit tap nor ſell wyne, walx, ſilkis, ſpicerie, wad, nor ſiclike ſtuff, nor zit ſtapill gudis; and that nane pak nor peill in *Leith*, nor utheris placis without the Kingis burrowis, under the pane of the eſcheting of the gudis to the Kingis uſe, that beis tappit, ſauld, pakit or peillit, aganis this ſtatute. *Ja.* IV. *fol.* 106. *act.* 119. 11 *Martij*, 1503. *Ja.* V. *fol.* 122. *act.* 26. 7 *Junij*, 1535. *Ja.* V. *fol.* 138. *act.* 87. 14 *Mart.* 1540.

C. XXI. Of thame that moleſtis the Magiſtratis of burrowis.

ITEM, It is ſtatute and ordanit, that na man, Erle, Lord, Baron, or uther, of quhatſumever degré, about or adjacent nychtbouris to burrowis, moleſt, troubill, nor inquiet the Proveſt, Aldermen, Ballies and Officiaris of burrowis, and Merchandis thairof, in uſing of thair francheis, liberteis and privilegeis, grantit to thame be our ſoverane Lord and his predeceſſouris, Kingis of *Scotland*, and in contrare the actis and ſtatutis maid thairupon, under the pane to be callit and accuſit as commoun oppreſſouris of our ſove-

ſoverane Lordis liegis, at generall juſtice airis, or private dietis, and juſtice courtis, as ſall be thocht expedient be the Kingis grace; and that the Juſtice-clerk tak inquiſitioun and dittay heirof as effeiris. *Ja.* V. *fol.* 123. *c.* 30. 7 *Junij*, 1535.

C. XXII. The ratificatioun of the privilege of burrowis.

ITEM, Our ſoverane Lady, with aviſe of hir ſaidis thré eſtatis in this preſent parliament, ratifeis, apprevis and confirmis all actis of parliament, ſtatutis, privilegis and immuniteis quhatſumever, gevin and grantit be our ſaid ſoverane Lady, or utheris hir predeceſſouris quhatſumever, in favouris of the burrowis, Proveſtis, Aldermen, Ballies, communiteis, and indwellaris within the ſamin, with all Letters and executoriallis that hes paſt, or may pas thairupon; gevand expres command, be thir preſentis, to the Lordis of our ſoverane Ladyis college of juſtice and ſeſſioun, to give and direct ſic reſſonabill letters at the inſtance of all burrowis, as thay, or ony of thame, will deſyre, or hes had of befoir, upon thair privilegis, and actis of parliament maid thairupon, in all tymes to cum, for putting of the ſamin to dew executioun with all rigour aganis thame that cumis or dois in the contrare of thair privilegis, without calling of ony partie: commanding and chargeing all our ſoverane Ladyis liegis and ſubjectis, that nane of thame tak upon hand to attempt, or pretend to attempt, violate or brek the foirſaidis lawis, actis of parliament, ſtatutis, ordinances, immuniteis, or utheris privilegis quhatſumever, gevin and grantit in favouris of the ſaidis burrowis, under the pane contenit in the ſamin, and under all pane and offence that thay, and everie ane of thame, may incur aganis our ſoverane Ladyis authoritie royall thairthrow. *Mar. reg. fol.* 179. *c.* 22. 4 *Junij*, 1563. *Mar. reg. fol.* 165. *c.* 24. 20 *Junij*, 1555. *Ja.* VI. *fol.* 3. *c.* 6. 28 *Aug.* 1571. *Ja.* VI. *fol.* 20. *c.* 33. 15 *Dec.* 1567.

C. XXIII. Libertie of a burges within burgh.

GIF ony dwelland without burgh have an burgage within burgh, he ſall not be haldin or eſtemit a burges in ony place, bot allanerlie within the burgh quhair the ſaid burgage lyis. *Leg. burg. c.* 13. Attour, he ſall not have lot nor cavill equallie with burgeſſis dwelland within the burgh. *Leg. burg.*

C. XXIV. Burgeſſis ſould not be trublit be keiparis of the Kingis caſtellis.

NA keiparis of the Kingis caſtell ſould enter in within ony burges manis hous, to ſlay his ſwyne, gryſis, geis, or foullis, bot he ſould come to the burges manis dur, and ask gif he hes ony of the premiſſis to be ſauld to the Kingis uſe; and gif he hes ony, he ſall ſell thame; and gif he hes, and will not ſell thame, it is leaſum to the caſtelman, gif he findis the ſamin on the ſtreitis, to ſlay thame, and deſyre the nichtbouris to appryſe thame, and give the price to the awneris thairof; bot it is not leaſum to the caſtelman, or ony of the Kingis ſervandis, to do this bot thriſe in the zeir, at *Zule*, *Paſche*, and *Whitſounday* only. *Leg. burg. c.* 49.

C. XXV. Libertie of a burges ſone.

ANE burgeſſis ſone, als lang as he is at his fatheris buird, ſall have the lyke fredome to buy and ſell as his father hes; bot quhen he is paſt fra his father till his awin fending, he ſall not have the ſamin libertie except he be burges. *Leg. burg. c.* 16.

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C. XXVI. Libertie of a Chaplain and Merchandis ſonis.

IT is ſtatute, that an Chaplanis ſone, induring his fatheris lyf-time, ſall anſwer as ane freman anent all kynd of libertie; bot efter his fatheris deceaſe, he loſſis and tynes the ſamin libertie: And the lyke is to be underſtand of the ſonis of Merchandis, except thay be in lykewayis Merchandis efter thair fatheris deceaſe. *Stat. reg. Da. c.* 22.

C. XXVII. Libertie to have ane oyne within burgh.

ILK burges of the Kingis may have ane oyne within his awin ground, and na uther bot the Kingis burges: And it ſall be on the land that he haldis of the king, and on na uther. *Leg. burg. c.* 29.

C. XXVIII. The Kingis burges is fré throw the haill realme to buy and ſell.

IMPRIMIS, All Burgeſſis of the realme are fré, and his libertie throuchout the haill realme, als weill be watter as be land, to ſell and buy, and do all thingis for thair commoditie and proffeit; and ſould not be trublit nor moleſtit thairintill be ony perſoun, under the pane of the Kingis full unlaw. *Leg. burg. c.* 141. *Stat Will. c.* 15. *de judic. c.* 35. Becaus thay ar under his protectioun. *Ibid. de jud.*

C. XXIX. Libertie in buying and ſelling.

NA alien Merchand, quha is not Merchand-burges, may buy woll, hyde, nor uther merchandice within burgh, or outwith the ſamin, except he buy the ſamin fra ane burges. *Leg. burg. cap.* 18. *Item,* It is leaſum to burgeſſis allanerlie, and to na uther man, to buy woll to be littit, nor to mak claith, and cut the ſame in pieces, or in ſmall, to be ſauld within burgh or without burgh. Bot it is utherwayis to be underſtand of the woll quhilk pertenis to ony man be reſſoun of his awin ſcheip or growth. *Leg. burg. c.* 22.

C. XXX. Wedowis within burgh.

GIF ony wedow buy and ſell within burgh with the nichtbouris, ſche ſall ſcot and lot with thame in taxatiounis and utheris helpis; and ſiclike gif ſche dois ſcot and lot, ſche ſould have libertie to buy and ſell. *Leg. burg. c.* 107.

C. XXXI. It is not leaſum to ane unfreman to ſell ſtapill gudis within the fredome of the burgh.

THE King may not give power or licence to ony of his liegis, being unfriemen, to buy ony kind of merchandice, walx, wyne, or ſtapill gudis, and to ſell the ſamin within the fredome of everie fré burgh of this realme; and gif his Hienes utherwayis dois, the ſamin gift, power and licence is of nane availl, and may be diſchargit and ſuſpendit *ſimpliciter* be the Lordis of counſall; becaus the ſamin is gevin in hurt and prejudice of the ſamin burgh, and contrare the commoun weill and law of this realme. 2 *Julij*, 1550, *The burgh of* Edinburgh *contra* David Rowane, 1 *t. c.* 694.

C. XXXII. Strangeris may not buy fiſh bot fra fremen allanerlie.

ITEM, It is ſtatute and ordanit, that na *Ingliſhman* or uther ſtranger buy hering, ſalmond, keyling, or ony uther fiſh, fra ony maner of perſoun within this realme bot fra frémen of burrowis, under the pane of eſcheiting thairof, and forefalting of thair conductis. *Penult. Julij*, 1516. 1 *t. c.* 376.

C. XXXIII. That the burrowis be wairnit for concluding of peace, weare or taxatiounis.

ITEM, The Quenis grace beand of willand mynd, that all Proveſtis, Aldermen, Ballies, counſall, and communitie, and inhabitantis of burrowis of this realme, be rather augmentit in thair pri-

privilegeis, maid be hir Grace and hir predeceſſouris to thame, nor diminiſhit thairintill; hes ſtatute and ordanit, be the aviſe of the thré eſtatis of this preſent parliament, that fyve or ſax of the Principallis, Proveſtis, Aldermen or Baillies of this realme, ſall, in all times to cum, be warnit to all conventiounis that ſall happin the Quenis Grace and hir ſucceſſouris to conclude upon peax or weir, with quhatſumever hir Hienes confederatis or inemeis, or making or granting of generall taxatiounis of this realme; and that hir Hienes, or counſall, ſall not conclude nor decern upon peax, weir or taxatiounis foirſaidis, without fyve or ſax of the ſaidis Principallis, Proveſtis, Aldermen, or Ballies of burrowis be warnit thairto lauchfullie, as effeiris. *Mar. reg. fol.* 178. *c.* 18. 4 *Junij*, 1563. *Item*, it is ſtatute and ordanit, that the Commiſſioneris and heidismen of burrowis be warnit quhen taxtis and contributiounis ar gevin, to have thair aviſe thairintill, as ane of the thré eſtatis of this realme. *Ja.* IV. *fol.* 106. *c.* 120, 11 *Mart.* 1503.

C. XXXIV. Packing and peling ſould be uſed within burgh allanerlie.

ITEM, It is ſtatute and ordanit, that na perſoun uſe packing nor peling of woll, hyds nor ſkinnis, nather loſe, nor laid, outwith fré burgh, and privilege thairof. *Ja.* V. *fol.* 138. *c.* 88. 14 *Mart.* 1540. *Mar. reg. fol.* 157. *c.* 32. 1 *Feb.* 1551.

C. XXXV. That Commiſſioneris of burrowis compeir togidder anis in the zeir at *Innerkething*.

ITEM, It is ſtatute and ordanit be the haill thré eſtatis, that in tyme to cum certane Commiſſioneris of all burrowis, baith ſouth and north, convene and gadder togidder anis ilk zeir, in the burgh of *Innerkething*, on the morne efter *St. James's* day, with full commiſſioun; and thair to commoun and treat upoun the weilfair of merchandice, the gude reule and ſtatutis for the commoun proffeit of burrowis, and to provide for remeid upoun the ſkaith and injureis ſuſtenit within the burrowis; and quhat burgh that compeiris not the ſaid day be thair Commiſſioneris, to pay, to the coiſtis of the Commiſſioneris, fyve pund; and zeirlie to have our ſoverane Lordis letter to diſtreinzie heirfoir, and for the in-bringing of the ſamin. *Ja.* III. *fol.* 78. *c.* 132. 1 *Octob.* 1487.

C. XXXVI. Anent the commoun paſſage in burrowis.

IT is ſtatute and ordanit be the Quenis Majeſtie, dowrear and Regent, with the aviſe of the thré eſtatis of parliament, that all commoun hie gaittis that fré burrowis hes bene in uſe of precedant, outher for paſſage fra thair burgh, or cuming thairto, and in ſpeciall all commoun hie gaittis fra fré dry burrowis to the portis and havinis nixt adjacent, or procedant to thame, be obſervit and keipit, and that nane mak thame impediment or ſtop thairintill; and gif ony dois, to be callit and accuſit for oppreſſioun, and puniſhit thairfoir, according to the lawis. *Mar. reg. fol.* 166. *c.* 27. 20 *Junij*, 1555.

C. XXXVII. Privilege of the burgh of *Perth*.

THE burgh of *Perth* has juſt richt and title to tak up and intromet with all unlawis and financis of juſtice, quhairin thair nychtbouris, indwellaris of the ſaid burgh, happinis to fall, and imploy the ſamin to the reparatioun and ſuſtentatioun of thair brig upoun *Tay*; and neverthles, gif ony burges of the ſaid burgh beis convict befoir the Juſtice for ony cryme, quhairthrow his moveabill gudis may fall under eſcheit, the ſamin on na wayis pertenis to the burgh,

burgh, bot to the King, to be disponit be his Majestie at his pleasour. 17 *Decemb.* 1541. *The King* contra *the burgh of* Perth, 1 *t. c.* 535.

C. XXXVIII. Privilege of *Edinburgh* anent merchandice brocht hame be strangeris.

ALL strangeris cumand in at the port of *Leyth* with merchandice and gudis, sall, at thair entries, mak just compt and leill entrie of thair haill gudis, to the Provest, Ballies, counsall and communitie of the burgh of *Edinburgh*, and sould have na merchandice and gudis langer in *Leyth* nor thay be dischargit and hoistit furth of schipbuird, nor zit mak ony mercat thairof in *Leyth* to ony maner of persounis, bot onlie within our soverane Lordis said burgh, as in the stapill of all sic gudis and geir, baith for the profeit of our soverane Lordis custume, and als in respect of the privilege and infeftment of fré burgh within the port of *Leyth*, gevin to the said burgh be our soverane Lordis maist nobill progenitouris of gude mynd. 23 *Feb.* 1501, Edinburgh *contra* Leyth, 1 *t. c.* 151.

C. XXXIX. Weir schippis arrivand at *Leyth*.

THE Provest, Ballies, counsall and communitie of *Edinburgh*, hes gude richt, title and power to buy, sell, or utherwayis to intromet with schipis of weirfair pertenand to ony strangeris that cumis within the read, havin or port of *Leyth*; and to buy upon lauchfull pryces all sic gudis and geir as alienis happinis to bring within the same in tyme of weir; and the town and indwellaris of *Leyth* hes na power to buy nor intromet thairwith. 24 *Jan.* 1522, Leyth *contra* Edinburgh, 1 *t. c.* 372.

G. XL. Divers privilegeis obtenit be the town of *Edinburgh* aganis *Leyth*.

THE indwellaris of *Leyth* may on na wayis buy woll, hyde, claith, skin, salmound, wyne, walx, victuellis, or ony maner of stapill gudis, fra unfremen in the countrie; bot all sic merchandice sould first cum and be presentit to the burgh of *Edinburgh*, and thairefter sould be bocht fra the fremen thairof. *Item*, The indwellaris, nor na uther unfremen, may pack and peill the saidis gudis in the town of *Leyth*, quhilk is ane unfré town, nor zit in ony uther place within the fredome of *Edinburgh*, bot all sic merchandice and gudis aucht and sould be brocht to the said burgh, as principall stapill thairof, and thair to pack and peill the samin, and pay thair custumis and dewteis thairfoir, as effeiris. 17 *Junij*, 1558. *Item*, All indwellaris of the town of *Leyth*, and utheris our soverane Lordis liegis, being unfremen, may on na wayis buy wyne, walx, victuellis, irne, tymber, lint, pick, tar, or ony uther stapill gudis in-brocht or cumand be strangeris in at the port of *Leyth*, or ony uther port within the fredome of *Edinburgh*, unto the tyme that the Merchandis and maisteris of the schipis cum to the Officiaris of the burgh of *Edinburgh*, and enter thair gudis in the town buikis; and thairefter the Comptroller, Thesaurar, or utheris the Kingis Officiaris, takand als mekle of all sic gudis as sall be necessar for our soverane Lordis awin proper use allanerlie, not abydand upon making of pryces thairof; the Officiaris of the said town makand pryces conform to the actis of parliament and lawis of the realme; and then the Comptroller, and Thesaurar, and uther Officiaris foirsaid, to pay as the prices ar maid; and our soverane Lordis liegis to have thair partis of all sic gudis of the samin

pryce

pryce maid be the Officiaris, and na derrer. *Item*, Na indwellar, of *Leyth*, nor unfreman, ſall buy keyling, hering, ſelchis, ſalmond or uther fiſche cumand within the port of *Leyth*, or ony uther port within the fredome of *Edinburgh*, or ſalt and peill the ſamin, nor ſend the ſamin away to *Ingland* and uther places, except the Kingis Comptroller, quha may tak ſamekle of the premiſſis, and uſe and diſpone the ſamin in maner foirſaid, as is neceſſar to the Kingis uſe allanerlie. *Item*, The indwellaris of the town of *Leyth*, nather fremen, nor na uther unfré perſounis, may mak mercat of ony maner of gudis within the fredome of *Edinburgh*, bot within the ſaid burgh allanerlie. 19 *Novemb.* 1519. 7 *July*, 1517, *The town of* Edinburgh *contra the town of* Leyth, 1 *t. c.* 393.

C. XLI. The water Baillie of *Edinburgh.*

The water Baillie of *Edinburgh* may hald his courtis upon the ſchoir of *Leyth*, under the ſtair of the Kingis wark. 29 *Octob.* 1524, 1 *t. c.* 403.

C. XLII: The anchorage of *Leyth* havin.

THE burgh of *Edinburgh* hes juſt richt and title to the anchorage and ſmall cuſtumis of all ſchippis and boitis within all places of the havin of *Leyth*, ſouth-ſyde and north-ſyde thairof, notwithſtanding the regalitie of the abbay of *Haliruidhous*, tuiching the north-part of the ſamin. 17 *Feb.* 1546. 1 *t. c.* 1056.

C. XLIII: Anent the eſcheit of him that committis ſlauchter within *Edinburgh.*

GIF ony man committis ſlauchter within *Edinburgh*, and beis apprehendit and convict thairfoir, the eſcheit of his moveabill gudis aucht and ſould pertene to the burgh and communitie of *Edinburgh*, *ratione criminis commiſſi infra burgum.* Bot gif ony perſoun committis ſlauchter within the ſamin burgh, and is fugitive, and denuncit rebell, for non-compeirance to underly the law thairfoir; in that cais his eſcheit aucht and ſould pertene to the King, becaus in this cais his eſcheit fallis not be reaſoun of crime committit within the burgh, bot be reaſoun of his non-compeirance. 28 *Maij*, 1542. *Hob. Ormeſtoun, the Kingis donatour*, contra *the burgh of* Edinburgh, 2 *t. c.* 101.

C. XLIV. Anent puniſhment of regrataris and foirſtallaris.

ITEM, Our ſoverane Lord, and thré eſtatis of parliament, hes ratifeit and apprevit, and be this act ratifeis and apprevis all actis and conſtitutiounis maid be his Hienes maiſt nobill progenitouris in tyme bygane, ſpeciallie the actis maid be umquhile his Hienes derreſt guidſchir King *James* the fyft, of worthie memorie, anent foirſtallaris and regrataris of victuallis, fleſh, pultrie and utheris vivers cumand to mercatis; and makis and conſtitutis the Proveſtis, Aldermen and Baillies of all his Hienes burrowis, his Majeſteis Juſtices, for execution of the ſaidis actis, within the boundis of thair awin fredomes and juriſdictiounis, and to uptak the panis contenit thairin, to be applyit efter the forme and tenour thairof. *Ja.* VI. *fol.* 15. *c.* 22. 20 *Octob.* 1579.

C. XLV. Ane burges ſummonit be the Serjand of the burgh.

GIF ony burges be ſummonit within burgh be the Kingis Officiar, to compeir befoir the Magiſtrat of the burgh, the ſamin ſummoundis is of nane availl; for ane burges of ony burgh may not be ſummonit bot be the Serjand and Officiar of the ſamin burgh. *Leg. burg. c.* 109. The quhilk ſummoundis ſould be maid befoir

foir ſufficient witneſſis; and at the day of compeirance it is not neceſſare that the Serjand mak aith thairanent, bot the witneſſis to ſweir that the ſummoundis is lauchfullie maid, and ſall mak record thairof in plane court. *De judic. c.* 56.

C. XLVI. Of heid courtis within burgh.

IT is to wit, that thair is thré heid courtis within burgh in the zeir, at the quhilk all the burgeſſis ſall be preſent; the firſt court is efter *Michaelmas*, the ſecund is efter *Zule*, and the third is efter *Paſche:* And gif ony burges beis abſent from the thré heid courtis, not havand ane lauchfull eſſonzie, be reſſoun of ſicknes, or abſence furth of the cuntrie, or at ony mercat or fair, gif he dwell within burgh, he ſall pay iv. pennies; and gif he dwell without burgh, he ſall pay viij *s.* for ane burges without burgh, in this cais, ſould pay ane greater unlaw nor uther burgeſſis dwelland within the ſamin, becauſe ſic burgeſſis, dwelland upaland, ar not compellit to cum to ony court within burgh bot to the ſaid thré heid courtis allanerlie. *Leg. burg. c.* 43.

C. XLVII. The times to cum to court in burgh.

GIF ony man defend or perſew in ony court within burgh, he ſall cum to the court in winter befoir ten houris, and in ſymmer befoir nyne houris; and gif he cumis, befoir the giving of ony dome, the perſewar ſould perſew, and the defendar ſould anſwer befoir the Proveſt and the men of the town, in plane court; and conforme to the challenge of the ane, and anſweris of the uther, richteous dome ſould be gevin in the court; bot gif he cum not within the time foirſaid, he ſall tyne his caus for that day, except he have ane lauchfull eſſonzie or excuſe. *Leg. burg. c.* 78.

C. XLVIII. Quhat cauſis pertenis to court within burgh.

ALL mutes and pleyis quhilk happinis to riſe within burgh, ſould be pleadit and determinat within the ſamin, except ſic complaintis as pertenis to the King and his crown, at court, the quhilk ſould be imbrevit and keipit untill the cuming of the Juſtice in the burrow court, and befoir him thay ſould be pleadit and determinat. *Leg. burg. c.* 6. becauſe the Proveſt and Ballie within burgh hes not power to intromit with ony actioun or caus pertening to the Kingis crown at court, without ſpeciall command, commiſſioun or or privilege grantit to thame to that effect; for all ſic actiounis pertenis to the juriſdictioun of the Juſtice and his deputis. *Quon. attach. cap.* 61. *Aſſiſ. Reg. Da. c.* 16.

C. XLIX. Burrow courtis ſould be haldin and ſet fra 15 dayis to 15 dayis.

ITEM, It is to wit, that the court within burgh ſould be haldin at leaſt ilk xv. dayis, and rin and be continuit fra xv. dayis to xv. dayis, als weill touching landis as moveabill gudis; and the Juge may not aſſigne ony day langer nor xv. dayis, bot with the will and conſent of partie, except he do the ſame, and prolong the ſame for inlak of counſall, or of perſounis neceſſarlie requiſit to the court. *Leg. burg. c.* 50.

C. L. Ane furthdwelland man ſall anſwer within burgh.

GIF ane burges within burgh hes lent ony gudis or geir to ony man dwelland without the burgh, and the debtour grant and confes the debt, he ſould rander and reſtoir the ſamin; and gif he denyis, he ſould be callit to anſwer within the burgh thairanent. *Leg. burg. c.* 5.

C. LI. Of pleyis betwix burges and merchand.

QUHEN ony contraverſie or mute happinis to ryſe betwix ane burges and ane merchand, the ſamin ſould be determinat within the third filling of the ſea, *Leg. burg. c.* 8. *c.* 141. *ſtat. Will. R. c.* 15. that is, within the ſpace of thré dayis; for ane ſtranger merchand ſould have ſhort proces, to the effect that, be lang indurance thairof, he be not brocht to extreme povertie. And ſiclike all uther puire perſounis that beggis thair meit at uther menis houſis, ſould have ſiclike proces, that thay, be prolonging thairof, periſh not for hunger in default of meit; and thairfoir all cauſis concerning ſic perſounis ar favorable, and ſould not have lang delay. *Ex lib. Scon. lib.* 4. *c.* 39. *de judic. c.* 47.

C. LII. Of pleyis betwix a burges and a caſtelman.

GIF ony man in the Kingis caſtell do ane fault to a burges, the burges ſall ſeik juſtice thairfoir at the caſtell, without the zettis thairof; and gif ane burges do ane fault to ony caſtelman, he ſall ſeik law of him within burgh. *Leg. burg. c.* 49.

C. LIII. Of ejectioun within burgh.

GIF ony man be in poſſeſſioun of land, litle or mekle, within burgh, and is ejectit and put out of the ſamin be ane uther, alledging him to have richt thairto, of his awin authoritie, be way of force, and dois it without the decreit of ane Juge, he that was firſt in poſſeſſioun, and is ejectit thairfra, ſould be reſtorit agane thairto, and abyde peceablie thairin, quhidder he be richteous or wrangous poſſeſſour, ay and quhill he be lauchfullie callit and ordourlie put thairfra be courſe of law, or dint of dome, and the committer of the foirſaid ejectioun ſall be in the Kingis amerciament. *Leg. burg. c.* 99.

C. LIV. Ane burges perſewit without burgh may be repledgit.

GIF ane burges be perſewit for ony querrel, he ſould not be compellit to enter in pley thairanent without the burgh, except it be in default of court within burgh, nor zit is bund to anſwer thairfoir bot at ane certane day and term, except he do in the contrare raſchlie and fooliſchlie: Nevertheles ane burges may be compellit to anſwer without burgh in ſic thingis as concernis the Kingis crown; in the quhilk, and all uther ſic caiſis, he ſould be jugit be his Peiris, be the law and conſuetude of burrowis. *Leg. burg. c.* 7. *Item*, gif ony dwelland within burgh is attachit be the Kingis Baillie for ony cauſe, he ſall not be compellit to pas out of the fredome of the burgh, to anſwer thairanent at the Kingis caſtell, or ony uther place, except he may not find borgh to anſwer within burgh, as law will. *Leg. burg. c.* 118.

C. LV. How a burges ſould be repledgit be his nichtbouris.

GIF ane burges be takin without the burgh for ony debt or treſpas, his nichtbouris ſall pas and repledge him upon thair awin expenſis, gif he wes takin within the commountie of the burgh; and gif he was apprehendit without the commountie, thay ſall pas upoun his expenſis that is takin. *Leg. burg. c.* 54.

C. LVI. Ane burges ſummonit to ony court without his burgh, ſould compeir and alledge his fredome.

GIF ony burges be challengit for ony querrel or caus pertening to the juriſdictioun of the burgh, within ony court or place, and is ſummonit thairfoir to the Kingis court, or ony uther court, he ſall compeir thair, and deſyre to be remmit to the court of the burgh quhairin he is burges, and offer to do full richt thair befoir his Proveſt

veſt. And gif he cumis to the Kingis court, and thair anſwer, makand na mentioun of his fredome, he ſall be thair jugit, and be compellit to do full richt. *Leg. burg. c.* 60.

C. LVII. The deid of ony burges is not prejudiciall to uther burgeſſis, or to the communitie.

GIF ane burges or ma, of thair awin fré motive will, cum to the court of the Schiref, or ony uther Juge, and perſew or defend in ony actioun and cauſe befoir him or thame, the ſamin aucht not to hurt or prejudge the remanent of the ſaid burgh in thair privilegeis; bot thay beand perſewit efterward befoir the Juge, may decline his juriſdictioun, and be repledgit to thair awin ordinar, quhen thay pleaſe to do and deſyre the ſamin. 14 *Novemb.* 1553. *the burgh of* Lanerk contra *the Schiref of* Lanerk. 1 *t. c.* 1164.

C. LVIII. Of pley betwix ane upland man and a burges.

ITEM, Gif ony uplandis man challenge ane man dwelland within burgh, the burges may defend himſelf aganis that man be law of the burgh. *Leg. burg, c.* 13.

C. LIX. Eſſonzeis in civil actiounis within burgh.

IN actiounis concerning challenge of landis, na eſſonzie, nor excuſaſioun, ſould be admittit betwix burges and burges, except the ſamin be maid be reſſoun of ſicknes provin be witneſſis, or be reſſoun of the Kingis ſervice, or abſence at fairis. *Leg. burg. c.* 95.

C. LX. Anent challenge of landis.

GIF ony man be challengit for land or tenement within burgh, he may not be compellit, bot gif he pleaſe, to anſwer thairto, without the Kingis letteris. *Leg. burg. c.* 46.

C. LXI. The perſewar ſould have ſiclike eſſonzeis as the defendar hes.

IN all actiounis twiching damnage, injureis, or challenge of landis, the like eſſonzeis and delayis ſould be gevin and grantit to the perſewar, as to the defendar, for in this cais the ane hes na privilege abone the other. *Leg. burg. c.* 108.

C. LXII. The eſſonzie and delay grantit to him that is furth of the realme.

GIF he that is ſummonit or challengit for landis, be abſent furth of the realme, bezond ſeis, befoir he wes ſummonit to that effect, the pley ſould be continewit to his returning, except he fraudfullie abſentis himſelf, and than the perſewar ſould bide fourtie dayis, and na langer, efter the time and day of the ſummondis. *Leg. burg. c.* 48.

C. LXIII. Payment of debtis aucht-ing to a burges.

GIF ony debt be auchtand to ane burges, and the ſamin beand ſufficientlie provin befoir a Juge, or be the debtouris confeſſioun, or utherwayis, beand certane in the ſelf, the Proveſt or principall keipar of the burgh ſall caus tak and apprehend the debtour in proper perſoun, (gif he be a laique man) quhair ever he may find him, within his juriſdictioun, and deliver and put his perſoun in waird within the burgh, thair to remane, upon his awin expenſis, untill he mak payment and ſatisfactioun for the debt; and the keipar of the priſoun to be commandit, that he reſſave and keip him, by delyverance of the ſaid Proveſt or keipar: And gif the keipar of the priſoun will not reſſave and keip him, he ſall be obligit to anſwer for the debt, gif he hes quhairupon he may do the ſamin; utherwayis, gif he be not reſponſall, he quha maid him keipar of the priſoun ſall be bund and obligit thairfoir: And the keipar of the priſoun, gif he reſſavis the debtour within pri-

priſoun, is obligit to anſwer for his bodie, or then for the debt. *Item*, Gif the debtour cannot be apprehendit within the juriſdictioun of the Proveſt, or keipar of the burgh, ony of thame may certifie the Chancellar, under thair ſeill and writ, of the ſaid debt, and of the veritie and cleirneſs thairof, within ane quarter of ane zeir. And the ſaid debtour being takin and apprehendit at command of the Chancellar, his moveabill gudis or landis ſall be takin, compriſit and gevin to the creditour, for payment of his ſaid debt; and albeit his ſaidis gudis or landis be not ſufficient for full and compleit payment of the ſaid debt: Nevertheles his bodie ſall remane in priſoun, untill the creditour be fullie and compleitlie ſatisfiet; and in the mean tyme the creditour ſall furniſh him breid and water for his ſuſtentatioun. And gif ony landis happin to be compryſit for the ſaid debt, the ſamin ſould pertene to the creditour, or his aſſignay, thair airis or aſſignayis, ſwa that gif thay be trublit or ejectit thairfra, thay may call and perſew thairfoir, untill the debt be compleitlie payit to thame; the quhilk beand done, the debtouris bodie, gudis and landis ſall be reſtorit and delyverit agane. *Item*, Gif the Chancellar or Schiref ſchawis or declaris to the King that the debtour cannot be fund nor apprehendit, the Creditour ſall have the Kingis letteris direct to all Schireffis within quhais juriſdictioun the debtour hes ony landis, charging thame to deliver to the creditour all landis, gudis and geir, moveabill and unmoveabill, pertening to the debtour, to be bruikit and joiſit be the creditour, his airis and aſſignayis, in maner abone ſpecifiet; the quhilk beand delyverit to him, may be annalzeit, ſauld and diſponit be him, to the effect that he have na damnage nor ſkaith throw the compryſing thairof; for in all ſic cauſis the creditour ſould have all damnage neceſſar, and reſſonabill coiſtis, togidder with his labouris, perſuit in pley, delayis and expenſis ſuſtenit be him. *Item*, Quhen the ſaidis landis ſould be delyverit to the creditour, all and haill the landis quhilkis pertenit to the debtour the time of the giving of the principal decreit, decernand him to be auchtand the ſaid debt, ſould be gevin and deliverit to the ſaid creditour, to be bruikit and joiſit be him, in quhatſumever perſounis handis thay come, efter the ſaid decreit, be infeftment or utherwayis: And gif ony perſoun be infeft thairintill efter the ſaid decreit, he hes gude richt and title to the proffitis of the ſaidis landis be vertew of the ſaid infeftment, efter the creditour is ſatisfyit of his debt, like as the principal debtour micht have had, gif the ſaid infeftment had not bene maid and gevin. *Item*, Gif the debtour fand ony ſovertie or cautioneris quha band and obligit thame for payment of the debt, and become principall debtouris thairfoir, the day of payment being bypaſt, the ſaidis cautioneris may be in the ſamin maner handlit takin, apprehendit and delyverit, in thair bodies, landis, gudis and geir, as is abone ſaid concernyng the principal debtour. *Item*, Gif it happinis the principall debtour or his ſovertie to deceis, the creditour hes na powar to tak his bodie, bot his landis, gudis or geir, in maner abone ſpecifiet. *Leg. Foreſt. c.* 87, 88.

C. LXIV. Ane burges haveand landis allanerlie to pay his debt.

GIF ane burges aucht debt to ony man, and at the terme of payment hes na gudis nor geir, bot landis allanerlie, quhairwith he may pay the ſamin, the landis beand delyverit to the creditour, ſall

ſall be keipit in his handis be the ſpace of zeir and day, and within that time ſall offer thame to the narreſt airis; and gif thay will not buy thame, it is leſum to him to ſell thame to quhome he pleaſis: And gif the price of the landis be mair nor the ſoume of the debt, the ſuperplus ſall be delyverit to the debtour. *Leg. burg. c.* 93.

C. LXV. Anent arreiſting of upland men within burgh for debt.

GIF ony perſoun dwelland without burgh be auchtand ony ſoumis of money, or debt, to ony uther perſoun dwelland within burgh, the creditour to quhome the debt is auchtand, may mene him to the Proveſt, or ony of the Baillcis of the burgh, and obtene command to ane Officiar of the ſamin, to arreſt the ſaid debtour, and put him in ward in the tolbuyth thairof, ay and quhill he find caution to anſwer beſoir thame, as law will; and gif the debtour, beand wardit, happinis to be releivit thairfra, and put to libertie, be the Proveſt, or ony of the Baillies, without conſent of the ſaid creditour, and na payment maid, nor zit ſufficient ſovertie fund to him thairfoir, the Proveſt or Baillie foirſaid is underſtand be the law to becum debtour and ſovertie for the ſaid debt; and thairfoir aucht and ſould pay to the creditour the ſamin, or ſamekle thairof as he previs ſufficientlie to be auchtand to him be the ſaid debtour, quha was wardit and releavit thairfra, as ſaid is. 13 *Feb.* 1567. *N.* contra *the Laird of* Craigmiller *Proveſt of* Edinburgh, 1 *t. c.* 907.

C. LXVI. Of a burges that findis ſovertie to his creditour, and thairefter deceaſis.

GIF ony burges be arreſtit and convict for debt, or ony uther cauſe, and hes not gudis, moveabill or unmoveabill, to mak payment and ſatisfactioun thairfoir, as law will, he ſould find ſufficient borgh and cautioun ſtrenzeabill for the ſamin. *Leg. burg. ex lib. Carneg. et in meo albo lib. pag.* 195.

ITEM, Gif ony burges aucht debt to ane uther burges, and find a pledge or cautioun thairfoir, and thairefter happinis to deceis, and his air have not gudis qnhairwith he may pay his predeceſſouris debt, bot allanerlie landis quhilk his predeceſſour left to him, the pledge or cautioun ſall have recours to the landis, and hald and retene thame in his handis be the ſpace of fourtie dayis, and within the ſaid time ſall offer the ſamin to the narreſt air, at thré courtis; and gif the air will not buy or louſe thame out, it is leaſum to the cautioner to ſell thame the beſt way he can, and deliver the ſuperplus to the air. *Leg. burg. c.* 92.

C. LXVII. Ane burges ſould be pledge for another.

ILK burges ſould be pledge for ane uther, anes, twyſe, thryſe, gif the principall debtour is reſponſall in landis or gudis to releive his pledge, and ſa lang untill he be hurt and ſkaithit thairby, for then he is not obligit to be thairefter pledge for him, except he pleis himſelf, and be ſatisfyit of the coiſtis and ſkaithis ſuſtenit in tyme bygane be him as pledge and ſovertie. *Leg. Foreſt. c.* 50.

C. LXVIII. Puniſhment of thame that tynes the pley within burgh.

ITEM, Our ſoverane Lord, and thré eſtatis, underſtanding that divers and ſindrie his liegis, namelie within burgh, ar becum ſa wilfull, obſtinat and malicious, that thay will not be content to ſatisfie thair nichtbouris and creditouris of ſic debtis as thay aucht juſtlie to thame, without calling and compulſion of the law, and extremitie thairof; Thairfoir ſtatutis and ordanis that the partie a-

ganis quhome decreit beis gevin within burgh, ſall pay, to the ſupport of the pure, tuelf penneis of everie pund, effeirand to that quhilk beis recoverit and obtenit befoir the Judge, and alſwa the expenſis of the partie obtenar of the decreit, at the modificatioun of the ſaid Judge: And gif ony partie alledges, producis or gevis in befoir the Judges within burgh ony defence or exceptioun quhilk hes bene of befoir proponit, to the delay of his partie, the producer thairof ſall pay the ſoume and pane of tuentie ſchillingis, to be imployit to the help of the pure; and that ſa oft as failzie beis maid: And this to extend alsweill to the procuratour as principall partie in tyme cuming. *Ja.* VI. *parl.* 6. *c.* 25. 20 *Octobris*, 1579.

Causes criminall.

C. LXIX. Of keiping ane burges, being a treſpaſſour.

Gif ane burges be challengit for ony treſpas or evill deid, and may not find a borgh, he ſall be keipit for the ſpace of xv. dayis in ane burges hous of the burgh, and thairefter his nichtbouris ſall leid and bring him to the Proveſt, quha ſall reſſave him fra thame, and ſend him to the Serjandis, (gif the burgh hes na priſoun) and the Serjandis ſall find gude and ſicker bandis quhairin he ſall be keipit, furthcumand to thame that followis and challengis him. *Leg. burg. c.* 61.

C. LXX. Of the taking and keiping of ane burges for ony treſpas.

ITEM, Gif ony burges, apprehendit without the burgh for ony evill treſpas, and retenit be thame quha challengis him, alledgis that he hes ane quha will be borgh for him, his perſewaris ſould bring him within the burgh, to the hous quhair he alledgis his borgh to be, gif he was tane the time of day-licht: And gif thay will do the ſamin within the time of nicht, he ſould be takin with clamour and crying, and ſould be retenit be his takeris and keiparis of the burgh untill the morning, that his nichtbouris may knaw for quhat caus he is takin: And gif he may have ony borgh, he ſall find the ſamin; utherwayis he ſall be led to the Serjandis hous, gif thair be na priſoun within the burgh, and keipit thair be his perſewaris in priſoun, untill he ſuffer dome. *Leg. burg. c.* 77.

C. LXXI. Anent the pointis of the crown within burgh.

It is not leaſum for the Proveſt or Ballies of ony burgh to intromet and decide in na actioun nor pley pertenand to the Kingis crown, bot allanerlie to mak attachiamentis thairintill, at the ſpeciall command of the Juſtice; becaus all ſic actiounis ſould be decydit befoir the Kingis Juſtice or his deputis. *Quon. attach. c.* 61. *Aſſiſ. Reg. Da. c.* 16.

C. LXXII. Of him that injuris the Proveſt.

Gif ony man miſſayis the Proveſt or Baillies in time of court, he ſould be chairgit to come with his freindis and deny the ſamin, ſaying with his mouth that he lyit, and thairfoir ſall ask him forgivenes; and thairefter he ſall ſweir, tuichand the evangell, *that he knawis na evill of him*: And gif in ony time thairefter he miſſayis him agane, he ſall mak him amendis at his awin ſicht and will of nichtbouris. *Leg. burg. c.* 102.

C. LXXIII. That na liggis nor bandis be maid within burgh.

ITEM, It is ſene ſpeidfull to the Lordis, that within the burrowis throwout the haill realme, na liggis nor bandis be maid, nor

zit

zit na commotioun nor ryſing of the commounis in hindering of the commoun law, bot at command of the heid Officiar: And gif ony dois in the contrare, and knawlege and taint may be gottin thairof, thair gudis, that ar fundin guiltie thairin, to be confiſkit to the King, and thair lyffis at the Kingis will. And that na man dwelland within burgh be fundin in manrent, nor ryde in rout in feir of weir, with na man bot with the King or his Officiaris, or with the Lord of the burgh thay dwell in, or with thair Officiaris, under the ſamin pane: And in lyke maner, that na indwellar within burgh nor land purches ony lordſchip in oppreſſioun of his nichtbouris, in lyke maner under the ſamin pane, *Ja.* II. *fol.* 43. *act.* 88. 6 *Martij*, 1457. *Ja.* IV. *fol.* 93. *act.* 57. 18 *Maij*, 1491. And als, that na man nor indwellar within burgh purches ony outlordſchip or maiſterſchip to landwart, to rout nor ryde, to pley at bar, or ony uther way in the oppreſſioun of his nichtbouris, bot ſoberlie, nichtbour to nichtbour, under the ſame pane: And that everie man dwelland within burgh anſwer and obey to the Officiaris of the ſamin, as ſaid is, quhen and in quhat wayis thay ſall be chargit be the ſaidis Officiaris, in defence of the realme and liegis, and for the commoun gude and weilfair of the burgh, in the adminiſtratioun of juſtice and law, under the pane foirſaid: And that the Juſtice-clerk zeirlie, in the taking of the dittay, inquire upon the ſaidis punctis; and the brekaris thairof to be puniſt be the Juſtice as uther crymis, efter the forme of the ſaid act. *Ja.* IV. *fol.* 93. *act.* 57. 18 *Maij*, 1491. *Item*, It is ſtatute that na man dwelland within burgh purches lordſchip out of burgh, in ony his actiounis or querrellis, to moleſt, troubill, or give feir or dredour to his nichtbour and partie, under the pane contenit in the actis and ſtatutis maid thairupon of befoir. *Ja.* V. *fol.* 123. *act.* 29. 7 *Junij*, 1535.

ITEM, It is ſtatute, that na nichtbour, craftiſmen, gentilmen, burgeſſis, nor indwellaris in the burgh uſurp aganis the authoritie of the Kingis Officiaris choſin in the burgh, nor mak liggis nor bandis in contrare the ſamin, under the pane contenit in the lawis and ſtatutis of the burgh. *Ja.* IV. *fol.* 107. *act.* 122. 11 *Mart.* 1503. C. LXXIV. That na nichtbour uſurp aganis Officiaris.

ITEM, Gif ane burges within burgh rebell aganis the communitie thairof, or commit ony fraud or falſet, and is convict, his hous ſall be caſſin down to the ground, and himſelf baniſht out of the burgh for ever. *Leg. burg. c.* 145. *ſtat. Will. R.* 19. *de jud. c.* 43. C. LXXV. Rebellioun and falſet within burgh.

GIF ony perſoun be takin reid hand with thift, blude or ſlaughter, committit and done within burgh, the indwellaris of the burgh havand privilege of baronie, at the ſute and inſtance of a perſewar, ſall incontinent, on day-licht, or in the nicht, execute juſtice upon the ſaid treſpaſſour; for in that cais thay ar repute and haldin Baronis. *De maritag. c.* 15. C. LXXVI. Of ane takin reid hand within burgh.

GIF ane burges be challengit be ane uplandiſman for thift fund in his hous or poſſeſſioun, and the burges deny, as a fré burges, the thift, and ſay that he hes not ane borgh thairof, bot that he bocht the C. LXXVII. Of ane burges challengit for thift be ane upland man.

the ſamin thing lauchfullie in the mercat of the burgh; in that cais the burges ſall mak his purgatioun be his ayth, and ſall allanerlie lois and tyne the thing challengit. Attour he ſall ſweir that he knawis not quhair his durre oppinis or ſteikis fra quhome he bocht the ſamin thing. *Leg. burg. c.* 28.

C. LXXVIII. Injuries done within burgh.

GIF ony challenge ane uther, alledgand that he dang him, or did ony uther wrang or injurie, the quhilk he makis faith that he wald not have ſufferit for ane certane ſoume of money, *viz.* ane hundreth pundis, xl. pundis, or xx. pundis, mair or les, as he will ſweir; and the defendar in his anſwering deny the wrang and unlaw, and ſay that he confeſſis that he did to him ſic ane thing, quhilk he aucht not till have done, and is thairfoir reddie to mak him amendis at the ſicht of honeſt men: In this cais the defendar dois weill, and ſall mak the ſaid amendis; utherwayis, gif he preciſelie denyis the ſamin, and will do na richt thairfoir, he ſall be convict in ane unlaw, and in all and haill the damnage and ſkaith quhilk the perſewar hes ſworne and taxt aganis him. *Leg. burg. c.* 101.

C. LXXIX. Bluidwit within burgh.

IT is to wit, that na bluidwit, mercheit herezeld, ſtingis dint, nor ſic uther thing, ſould be hard within burgh, or tane up be the ſamin, *Leg. burg. c.* 19. except thay have ſpeciall privilege grantit to thame.

C. LXXX. Of watching and walking for fyre.

OF ilk hous quhairin ony man dwellis within burgh, ane that is cum to mannis age is obliſſit, for feir and perrell of fyre, to watche and walk in tyme of nicht, quha with ſtaf, and twa armit men, ſall pas furth at time of covert fyre, and ſall gang fra dur to dur, and ſwa watch, biſſelie and wyſelie quhill the morning; and gif he failzeis heiranent, he ſall pay ane unlaw of iiij *d.* Bot in this cais wedowis ſall be exemit, and ſould not be compellit to ſuſtene a man to watch, except they buy and ſell with the nichtbouris. *Leg. burg. c.* 84.

C. LXXXI. Deforcement within burgh.

GIF ane Serjand of burgh ſall be deforcit in executioun of his office, the Proveſt and Baillies of the burgh hes ſufficient power to correct the deforcer. *Leg. burg. ex lib. Carneg. et in meo albo libro, p.* 195.

C. LXXXII. That nane be fundin in tavernis efter 9 houris.

ITEM, It is ordanit, that na man in burgh be fund in tavernis of wyne, aill or beir, efter the ſtraike of nyne houris, and the bell that ſall be rung in the ſaid burgh; the quhilkis fundin, the Alderman and Baillies ſall put thame in the Kingis priſoun; the quhilk gif thay do not, thay ſall pay for ilk tyme that thay be fundin culpabill befoir the Chalmerlane fyftie ſchillingis. *Ja.* I. *fol.* 24. *act.* 161. 22 *Octob.* 1436.

C. LXXXIII. Unlawis within burgh.

ANE unlaw within burgh of thame that is convict in burrow-court, ſould not exceid the ſoume of viij *s. Leg. burg. c.* 42. *Leg. Mal. Mack. c.* 4.

C. LXXXIV. Anent ſtancheing of tumultis within burgh.

ITEM, It is ſtatute and ordanit be our ſoverane Lady, with aviſe of the thré eſtatis, for ſtancheing and ſuppreſſing of tumultis, up-

uproris and troublis, that hes happinit within burrowis in all tymes bypaſt; That nane of our ſoverane Ladyis liegis preſume, pretend, or tak upon hand to mak ony privie conventiounis nor aſſembleis within burgh, put on armour, cleith thameſelfis with wappinnis, or mak ſound of trumpet or talberone, or uſe culveringis, diſplayit banneris, anſeinzeis, or uthers inſtrumentis bellicall quhatſumever, in ony tyme heirefter, without the ſpeciall licence of our ſaid ſoverane Lady, and hir Hienes Magiſtratis within the burgh, quhair the ſaid tumult and uprore happinis to be, had and obtenit thairto, under the pane of deid: Provyding that the raiſing and convening of the inhabitantis of the ſaidis burrowis be the Magiſtratis, for executioun of repreſſing of malefactouris be juſtice, be not comprehendit under this act. *Mar. Reg. fol.* 179. *act.* 49. 4 *Junij*, 1563.

ITEM, It is thocht expedient and lauchfull that the Officiaris of burgh, *viz.* the Baillie and Serjandis, ſall enter within the debtouris houſe, and tak furth ane ſufficient poind for the debt auchtand be him, and ſall deliver the ſamin frelie, and outwith the houſe, to the creditour; the quhilk poind the creditour and the Serjand in the merkat ſall offer to ſell on thré merkat dayis, and the third day thairof thay may ſell the ſamin for the beſt pryce thay may get thairfoir, without fraud or guyle; and gif thay may not ſell the ſamin, thay ſall gar it be roupit and appryſit be leill and trew appryſouris, ſworn to that effect: And the ſame may be delyverit to the creditour, ilk third pennie being defalkit of the pryce ſet thairupon be the appryſouris; and gif thair be ony ſuperplus of the ſaid pryce, abone the debt, the ſamin ſould be delyverit to the debtour; and gif the pryce be not ſamekle as the debt, nor ſufficient for full payment thairof, it is leaſum to tak ane uther poind incontinent, and without delay, untill the creditour be compleitlie payit of the debt auchtand to him, in maner abone expremit. *Leg. burg. ex lib, Carneg. et in meo albo lib. c.* 195. C. LXXXV. The maner of poinding within burgh.

IT is devyſit and ordanit, that na Officiar ſall poind nor diſtrenzie ony perſoun indwellar of ony burgh, bot the Proveſt, Baillies and Officiaris: And gif ony ſoumes of money or debt be recoverit upon ony nichtbour or indwellar within burgh, the letteris gevin, conforme to the decreit, aucht and ſould be direct to the Proveſt and Baillies of the burgh, and to nane utheris. 9 *Julij*, 1538. 1 *t. c.* 478. C. LXXXVI. Na indwellar within burgh may be poindit bot with ane Officiar of the burgh.

ITEM, Ane burges may not poind ane uther for ſic debt as is not liquidat nor provin; bot gif the burges debtour will not pay the debt, he ſould be ſummonit be the Serjand of the burgh, at the inſtance of the uther burges, to compeir at ane certane day to anſwer as law will thairanent, *Leg. burg. c.* 47. for ane burges may not poind ane uther burges without licence askit and obtenit fra the Proveſt or Baillie. *Leg. burg. c.* 4. & 103. C. LXXXVII. Ane burges may not poind ane uther bot be ordour of law.

NA burges may poind ane uther, his nichtbour, dwelland within ane uther burgh, for ony treſpaſſe, or for ony uther manis debt, bot C. LXXXVIII. How a burges may poind ane burges of ane uther burgh.

bot gif he be principall debtour, or borgh, and the Proveſt of the uther burgh failzie in doing juſtice thairanent. *Leg. burg. c.* 103.

C. LXXXIX. How a burges may poind ane uplandis man.

IT is leaſum to ony burges to poind thame that dwellis without the burgh, within his houſe, or without, within the time of merkat, or without the ſamin, bot licence of the Proveſt; except thair be fair within the burgh, or gif he be in the Kingis hoiſt, or keip-and the Kingis caſtell, *Leg. burg. c.* 3. for thair is divers impedimentis in taking of poindis to ſtop the ſamin to be tane within burgh, *viz.* Gif the Lord and awner of the poind be in the Kingis hoiſt, or in the Kingis caſtell to keip it, or walk it, for fourtie dayis; or gif he be occupyit in commoun effairis, or be cum to burgh to buy his maiſteris meit, *Leg. burg. c.* 35. *Item*, Ony burges may poind ane upland Man for debt within the burgh, in his awin houſe, or without the ſamin; bot gif the upland man be ſittand upon his hors, he may not be chargit to licht down, nor his hors at that time may be poindit; and ſiclike he may not be poindit, gif he was ony time that ſame day poindit of befoir, or gif he come to the town to enter ony poind for the quhilk he was befoir poindit; for gif ony leill man ſaw his poind tane, he ſall be quyte that day fra farder poinding. *Leg. burg. c.* 34.

C. XC. Poinding for maillis and dewteis within burgh.

GIF ony tenent or mailler payis not his maill at the terme, it is leaſum to his maiſter, without licence of the Proveſt, to tak ane poind fra him thairfoir, within his awin land occupyit be the ſaid mailler. *Leg. burg. c.* 56.

C. XCI. Poinding of ſtrangeris.

Gif ony ſtranger be auchtand debt to ane burges, the burges may poind his gudis and geir thairfoir, quhairever he findis the ſamin within the burgh. *Leg. burg. c.* 57.

C. XCII. Poinding of fiſchearis and utheris.

NA man may poind a fiſcher, quhilkis bringis fiſch to the Kingis burgh to be ſauld, bot for fiſch, or for his awin proper debt: And ſiclike, it is not leaſum to poind thame that bringis wod, peitis, turvis or fewal to be ſauld, except it be for the ſaid wod, or fewal, or for thair awin proper debtis. *Leg. burg. c.* 37.

C. XCIII. Of borrowing of poindis within burgh.

IT is to wit, that upland men may borrow and replege thair poindis within thré oukis and thré dayis efter the taking thairof, and efter that time he may borrow the ſamin; and gif thay will not borrow the poindis and gudis poindit, ſic as hors or ony uther beaſt, and the ſamin in the mean time happin to die for hunger, the burges at quhais inſtance thay war poindit ſall caus draw thame furth, and tak off thair ſkin, and ſall keip and retene to himſelf the hyde and the taill; and thairefter it is leaſum to him to tak a poind for the ſamin debt agane, *Leg. burg. c.* 38. *Item*, Ane burges may not be compellit to reſſave or tak fra ony upland man ony uther borgh for his poind, but ane burges allanerlie, *Leg. burg. c.* 34.

C. XCIV. That na Cordinar, nor uther craftiſman, tak na cuſtumes of uther.

Craftis and office-men within burgh.

ITEM, It is thocht expedient, becaus it is cleirlie underſtandin that the craftiſmen of burrowis, ſic as cordounaris and utheris, takis

takis of men of the ſamin craft, cumand to the merkat on *Monounday*, ane penie of ilk man, quhilk is the caus of derth, and exalting of thair peny-worthis, ſic as ſchoone, was wount to be ſauld for twelf *d.* or better ſhape, and uther merchandice, that is exaltit for ane peny to ſax or aucht penyis, quhilk is greit ſkaith to the commoun proffeit; That thairfoir na maner of craftiſman nor Cordounar tak ony maner of taxatioun, peny, nor uther than was wount to be takin of the auld law; and quha ſa dois in the contrare, ſall be repute as ane oppreſſour of the Kingis liegis, and to be indictit thairfoir; and the Clerk of the Juſtice air to tak dittay thairupon; ſwa that he that is brekar thairof ſall buy his lyſe thairfoir, as for commoun oppreſſioun. *Ja.* IV. *fol.* 97. *cap.* 74. 26 *Junij*, 1493.

C. XCV. Of pryce and ſeyis of craftiſmen.

ITEM, It is ordanit that the Alderman and the counſall of ilk town ſworne, ſall sé and pryſe the mater and the coiſt and the travell of the warkman, and thairefter pryſe the maid wark, how it ſall be ſauld, and that pryce mak knawin to the Kingis commounis, and be oppin cryit. *Ja.* I. *fol.* 13. *c.* 88. 11 *Mart.* 1746. *Item*, It is ordanit that the counſall of the town ſall sé and ordane quhat ſie warkmen ſall have for thair handling of thair craft, that wirkis uther menis warkis, as wrichtis, maſounis, and uther ſiclyke. *Ja.* I. *fol.* 13. *act.* 89. 11 *Martij*, 1426.

C. XCVI. That na craftiſman tak upon hand to do that quhilk he may not fulfil.

ITEM, Becauſe it is underſtandin to the Kingis Hienes, and his thré eſtatis, that men of craftis convene togidder, and makis reule of thair craft, that quhat perſoun of thame that wald begin ane uther manis wark, and he at his pleaſour will leif the ſaid wark, that nane of the ſaid craft dar not compleit and fulfil the ſamin wark; it is heirfoir aviſit, ſtatute and ordanit, of all the makaris of ſic ſtatutis, that quhair ony beginnis ane manis wark, ane uther ſall not end it; that all the makaris and uſaris thairof ſall be puniſt as oppreſſouris of the Kingis liegis, and dittay tane thairupon be the Clerkis of the juſtice air. *Ja.* IV. *fol.* 97. *c.* 76. 26 *Junij*, 1493.

C. XCVII. Anent the conductioun of craftiſmen.

ITEM, Becauſe it is hevilie murmurit, that all craftiſmen of this realme, and ſpeciallie within burrowis, uſis ſic extorſioun upon utheris our ſoverane Lordis liegis, be reſſoun of thair craftis and privie actis and conſtitutiounis, maid amangis thameſelfis, contrare the commoun weill, and in greit hurt, prejudice, damnage and ſkaith to all the liegis of this realme; Thairfoir it is ſtatute and ordanit, that in all tymes cuming it ſall be leaſum to all our ſoverane Lordis liegis, that hes ony biggingis or reparatiounis to be maid, for the making of policie in this realme, outher to burgh or to land, to cheis gude craftiſmen, fremen, or utheris, as he thinkis maiſt expedient for ordouring, bigging and ending of all ſic warkis. And gif ony craftiſman beginnis the ſaid wark, and dilayis to end the ſamin, that the perſoun that cauſis to big the ſaid wark, or reparatioun foirſaid, to cheis and tak uthers in thair placis, als oft as neid beis, to perfurneis and end furth the ſaid wark for policie of the realme; and that na impediment be maid to ſic craftiſmen, uſand thair craft, as ſaid is, be ony uther of the ſaid craft within this realme, under the

the pane of tinfall of thair fredome, and breking of the actis of parliament. And that the Proveſt and Baillies of all burrowis tak inquiſitioun heirupon, and put this act to executioun in all punctis. *Ja.* V. *fol.* 139. *act.* 92. 14 *Martij*, 1540.

C. XCVIII. That na craftiſman tak payment for halie dayis.

ITEM, Becauſe it is clearlie underſtandin to the Kingis Hienes, and his thré eſtatis, that Maſonis and uther men of craft convenis togidder, and makis rule of thair craft, that thay ſall have thair fee, als weill on the halie day as for the wark day, or els thay ſall not labour nor wirk; it is heirfoir aviſit, ſtatute and ordanit, that all Maſonis, Wrichtis, and uther men of craft, that ſtatutis that thay ſall have fee, als weill for the halie day as for the wark day; that all the makaris and uſaris of the ſaid ſtatutis ſall be indictit as commoun oppreſſouris of the Kingis liegis be thair ſtatutis, and that the Clerkis of juſticiarie ſall tak dittay thairupon, and thay to be puniſt as oppreſſouris. *Vid. latius in lib. impreſſo.* *Ja.* IV. *fol.* 97. *act.* 75. 26 *Junij*, 1493.

C. XCIX. Of craftiſmen, brouſtaris, ſelleris of ſalt and victuall.

ITEM, Becauſe the greit oppreſſioun daylie done upon our ſoverane Lordis liegis be Cordoumaris, Smythis, Baxtaris, Brouſtaris, and all uther craftiſmen, ſelleris of victuall and ſalt, compelland thame to pay for thair ſtuff and warkmanſchip exhorbitant prices, to the greit ſkaith of all our ſoverane Lordis liegis, bringand ſic derth in the cuntrie that the ſamin may not be ſuſtenit: And for remeid heirof, it is ſtatute and ordanit, that our ſoverane Lord ſall give ane commiſſioun to certane his Lordis, and utheris quhome his grace pleſis beſt, to ſit, and with thame the Proveſt of *Edinburgh*, and mak ſic ſtatutis and ordinances as thay ſall think maiſt expedient for the commoun weill, to cauſe all craftiſmen within the town of *Edinburgh*, and utheris of the realme, to mak gude and ſufficient ſtuff, and ſell the ſamin of ane competent price, and to tak competentlie for thair warkmanſchip and labouris gif thay wirk, ane uther manis ſtuff and mater; and to mak all ſellaris of victuall or ſalt, to ſell the ſamin of ane gainand pryce, without derth; and quha dois in the contrare, to puniſh thame with all rigour: And the ſaidis Commiſſaris to do juſtice upon the brekaris of thair ordinances, als oft as thay heir murmure or complaint thairof, and to puniſh thame in thair gudis, as thay find the greitnes of the fault, as effeiris. *Ja.* V. *fol.* 123. *c.* 33. 7 *Junij*, 1535.

CHAP. C. Price of craftiſmen, of meit and drink in tavernis.

ITEM, Forſamekle as my Lord Governour, and thré eſtatis of parliament, regardand the exhorbitant prices, that everie craftiſman within burgh raiſis upon our ſoverane Ladyis liegis, in all ſic thingis as pertenis to thair craft, ſwa that the prices ar doublit and triplit be mony of thame, to the greit hurt of the ſaidis liegis; quhilk is conſiderit to be of practique be the Dekinis of everie craft, and the fault thairof is alway in the Proveſt and Baillies of everie burgh, that overſeis the ſaidis Dekinnis and craftiſmen, and correctis thame not, conforme to the act of parliament; Thairfoir it is ſtatute and ordanit, that all Proveſtis and Baillies of fré burrowis, with all diligence, convene the ſaidis Dekinnis and craftiſmen afoir thame, and thair, on everie thing pertening to craftiſmen, to ſtatute and ordane reſſonabill prices, effeirand to thair craft, and

that

that the ſamin be put in writ, and producit afoir the Lordis of the articlis in the nixt parliament, to be haldin the thrid day of *April* nixt to cum, to be conſiderit be thame gif thay be reſſonabill; and gif ſwa be, to be authoriſit; and gif thay be unreaſonabill, to be reformit: And ſiclyke that effeirand to the prices of victuallis, that the ſaidis Proveſt and Baillies cauſe the hoſtillaris to tak ane reſſonabill price for ane manis denner and ſuppar, that thay may hald thair awin, and the Quenis liegis be not ſa grevit and hurt throw the greit prices takin, far abone all cuſtum and uſe, as hes bene in this realme afoir thir dayis; and as beis ſtatute heirupon in burgh, that the ſamin be delyverit to the Schiref of the ſchire, to gar the ſaidis prices be keipit to landwart; and gif ony of the ſaidis Dekinnis or Hoſtillaris obeyis not the ordinance of the ſaidis Proveſt and Baillies, that thay deprive thame of thair offices and privilege; and efter thay be deprivit, gif thay mell farther thairwith, to be callit to underly the law to particular dietis afoir the greit Juſtice, as for contemning and breking of the actis of parliament, and to be puniſt in thair perſounis and gudis with all rigour. *Mar. R. fol.* 155. *act.* 27. 1 *Feb.* 1551.

C. CI. Na craftiſman ſould bruke office in burgh.

ITEM, It is ſtatute and ordanit that na craftiſmen bruke office within burgh in times cuming, except twa of thame maiſt honeſt and famous, to be choſin zeirlie upon the counſall, and thay twa to be ane part of the auditouris zeirlie to the compt of the commoun gudis, according to the actis of parliament maid thairupon of befoir; and quhaſaevir cumis in the contrare of this act to be puniſt, be warding of thair perſounis be the ſpace of ane zeir, and tinſall of thair fredome within burgh, and never to be reſſavit as frémen unto the time thay obtene the favour and benevolence of the Proveſt, Baillies and counſall quhair the fault is committit; and the third of thair gudis to be applyit to our ſoverane Ladyis uſe, for thair contemptioun. *Mar. R. fol.* 166. *act.* 26. 20 *Junij*, 1555.

C. CII. That na man of craft uſe merchandice,

ITEM, It is ſtatute and ordanit, that na man of craft uſe merchandice be himſelf, nor ſaill in merchandice, nouther be himſelf nor his factouris, nor his ſervandis, bot gif he have leive, and renunce his craft bot collour or diſſimulatioun, *Ja.* III. *fol.* 48. *c.* 15. *ult. Januarij*, 1466. under the pane of eſcheit of the merchandice that he uſis occupyand his craft; and this eſcheit to be inbrocht be the ſerchouris, to our ſoverane Lordis uſe, and compt thairof to be maid in checkar. *Ja.* III. *fol.* 77. *act.* 128. 1 *Octob.* 1487.

C. CIII. Ane generall conſtitutioun anent buying and ſelling.

It is ſtatute, that generallie all buyaris and ſellaris within burgh, ſic as Baxteris, Brouſteris, Fleſchouris, fiſch-ſelleris and hukſteris, ſall ſell to all perſounis, als weill dwelland within burgh as without the ſamin, and ſall retene na mair within thair awin houſis, to the uſe and ſuſtentatioun of thair families, than the availlour of iiij. *d.* for all the reſt ſould be commoun to all perſounis that lykis to buy; and quha, in doing of the contrare, beis convict, ſall be in ane unlaw of viij *s. Leg. burg. c.* 96. *De jud. c.* 23.

C. CIV. Ilk craft ſould have a Dekyn.

ITEM, It is ordanit, that in ilk town of the realme, of ilk ſindrie craft uſit thairin, be choſin a wyſe man of that craft, be the laif of that craft; and, be conſent of the Officiar of the town, the quhilk ſall be haldin Dekin, or maiſterman over the laif for the time, to governe and aſſay all warkis that beis maid, befoir the craftiſmen of that craft, ſwa that the Kingis liegis be not defraudit and ſkaithit in tyme to cum as thay have bene in tyme bygane, throw untrew warkmen of craftis. *Ja.* I. *fol.* 7. *act.* 42. 12 *Mart.* 1424.

C. CV. Of Dekinnis of craft, and thair office.

ITEM, The King, of deliverance of parliament, hes ordanit, that the Dekinnis of craftis in burrowis ſtand to the nixt parliament, in the maner as efter followis; that is to ſay, That the Dekin of ilk craft ſall have na correctioun of the craft, na of na man thairof, bot allanerlie to sé that the warkmen be cunnand, and the wark ſufficient, the quhilk he ſall aſſay and examin everie fyftene dayis anis. *Ja.* I. *fol.* 13. *act.* 87. *ult Septemb.* 1426.

C. CVI. Doun putting of Dekinnis of craftis.

ITEM, Becauſe the ſtatutis and ordinances maid of befoir anent Dekinnis of craftiſmen in burrowis within this realme, tendis to the hurt and commoun diſproffeit of the haill realme; the King, with aviſe and conſent of the thré eſtatis of this realme, be the tenour heirof, revokis and allutterlie annullis the ſamin, defendand and forbiddand that in na tyme heirefter ony ſic Dekinnis be choſin be the craftiſmen within ony burgh of this realme; and that thay quha ar alreadie choſin ſall not uſe or exerce heirefter the office of Dekinnis, nather ſall mak thair wontit aſſembleis, the quhilk is rather preſumit to be conſpiraceis nor lauchfull conventiounis, *Ja.* I. *fol.* 14. *act.* 96. 1 *Julij*, 1426. *Item*, Becauſe it is cleirlie underſtandin to the Kingis Hienes, and his thré eſtatis, that the uſing of Dekinnis of men of craft in burrowis is richt dangerous, and, as thay uſe the ſamin, may be the cauſe of greit troubill in burrowis, and convocatioun and ryſing of the Kingis liegis, be ſtatutis making contrare the commoun proffeit, and for thair ſingular proffeit and avale; quhilk ſervis greit punitioun: It is heirfoir aviſit, ſtatute and ordanit, that all ſic Dekinnis ſall ceis for ane zeir, and have nane uther powar, bot allanerlie to examine the fynes of the ſtuff and wark that beis wrocht with the remanent of his craft, *&c.* *Ja.* IV. *fol.* 97. *act.* 75. 26 *Junij*, 1493.

C. CVII. Wardanis over craftiſmen, and pryces of ilk warkmanſchip.

ITEM, It is ſtatute and ordanit, that men of craftis within burrowis ſall have for a zeir to cum a Wardane choſin be the counſal of the burgh; the quhilk Wardane, with counſall of uther diſcreit men, unſuſpect, aſſignit to him be the ſaid counſall, ſall examine and priſe the mater and the warkmanſchip of ilk craft, and ſet it to a certane price; the quhilk gif ony brekis, the ſaid Wardane ſall puniſh the brekaris in certane pane; quhome gif he puniſh not, the Alderman, Baillies and counſall of the burgh ſall puniſh thame in certane pane; quhome gif thay puniſh not, the King ſall have a certane pane of that burgh: The pane of the brekaris of the price ſall be the eſcheit of the ſamin thing of the quhilk the price beis brokin of, to be applyit the tane half to the Wardane of that craft, and the tother half to the commoun wark of that burgh, quhair it beis ſene maiſt expedient. The

pane

pane of the pryſar, gif he be negligent and puniſh not, ſall be in the unlaw of the burrow court, als oft as he beis convict culpabill and faultiſe, ſall be applyit for the half to the commoun purſe of the town, and for the tother, half quhair it beis maiſt expedient to the wark of the town. The pane of the Alderman, Baillies and counſall of the burgh, that beis negligent in the punitioun of the ſaid Wardane, als oft as thay default, ſall be in ten pundis to the King, and ſall be raiſit efter that thay be challengit and convict be the Chalmerlane, and his deputis, in the Chalmerlane air, anis in the zeir: The quhilk ordinance ſall be extendit to Maſounis, Wrichtis, Smithis, Tailzieouris, Wobſtaris, and all utheris in lykewayis generallie, quhais feis and handling ſall be pryſit, as is befoir ſaid. And attour to landwart, in ſchirefdomes, ilk Baron ſall gar pryſe in thair baroneis, and puniſh the treſpaſſouris, as the Wardane dois in the burrowis; and gif the Baron dois not, the Schiref ſall puniſh the Baron; and gif the Schiref dois not, thay ſall be in amerciament to the King, as the Alderman, Baillies and counſall in burrowis: And the Alderman, Baillies, and counſall in burrowis ſall inquire, ilk moneth at the leaſt, gif the Wardanis of the craftis pryſe weill, and puniſh the treſpaſſouris: And gif ony man compleinzeis of over greit price, or of the breking of the price maid or ſet, to the Alderman, Baillies and counſall, that thay puniſh the brekaris of the price, and gar the partie compleinzeand be aſſythit, under the pane foirſaid. *Ja.* I. *fol.* 17. *act.* 113. 1 *Mart.* 1427.

C. CVIII. Anent the diſchargeing of Dekinnis, and cheſing of viſitouris.

ITEM, Becauſe it hes bene cleirlie underſtandin to the Quenis Grace Regent, and the thré eſtatis, that the cheſing of Dekinnis and men of craft within burgh hes bene richt dangerous, and, as thay have uſit thameſelfis in tymes bygane, hes cauſit greit troubill in burrowis, commotioun and ryſing of the Quenis liegis in divers partis, and be making of liggis and bandis amangis thamſelfis, and betwix burgh and burgh, quhilk deſervis greit puniſhment: Thairfoir the Quenis Grace Regent, with aviſe of the thré eſtatis foirſaidis, hes ſtatute and ordanit, that thair be na Dekinnis choſin in tymes cuming within burgh, bot the Proveſt, Baillies and counſall of the burgh to cheis the maiſt honeſt man of craft, of gude conſcience, ane of everie craft, to viſie thair craft, that thay labour ſufficientlie, and that the ſamin be ſufficient ſtuff and wark; and thir perſounis to be callit viſitouris of thair craft, and to be electit and choſin zeirlie at *Michaelmas*, be the Proveſt, Baillies and counſall of burgh; and that thay thairefter give thair aith in jugment to viſie lelilie and trewlie thair ſaid craft, without ony powar to mak gaddering or aſſembling of thame to ony private conventioun, or making of ony actis or ſtatutis; bot all craftiſmen, in tymes cuming, to be under the Proveſt, Baillies and counſall: And thir viſitouris choſin, ſworne, and admittit to have voting in cheſing of Officiaris, and uther thingis, as the Dekinnis voting of befoir; and that na craftiſman bruke office within burgh in tymes cuming, except twa of thame, maiſt honeſt and famous, to be choſin zeirlie upon the counſall, and thay twa to be ane part of the auditouris zeirlie to the compt of the commoun gudis, according to the actis of parliament maid thairupon of befoir; and quhaſaever cumis in the contrare of this act, to be puniſt be warding of thair perſounis be

be the ſpace of ane zeir, and tinſall of thair fredome within burgh; and never to be reſſavit thairefter as fremen, unto the time thay obtene the favour and benevolence of the Proveſt, Baillies and counſall quhair the fault is committit, and the third part of thair gudis to be eſcheit, and applyit to our ſoverane Ladyis uſe, for thair contemptioun. *Mar. R. fol.* 165. *act.* 26. 20 *Junij*, 1555.

C. CIX. Maltmen ſould not have a Dekin.

ITEM, It is ſtatute and ordanit be our ſoverane Lord, his Regent, and thré eſtatis of this preſent parliament, for the commoun weill of this realme, that thair be na Dekin of craft of Maltmen, outher to burgh or to land, or ony uther part within this realme; and gif ony writing, gift or privilege be gevin ony tyme befoir, our ſoverane Lord, with aviſe of my Lord Regent, and thré eſtatis foirſaidis, decernis and declaris the ſamin to have bene fra the beginning, and to be in all tyme cuming, null and of nane availl, force nor effect; ſwa that it ſall never be leaſum to ony of the Maltmen of this realme to have Dekinnis, bot to be repute na craft. *Ja.* VI. *fol.* 21. *act.* 37. 25 *Decemb.* 1567.

C. CX. Of the Dene of Goldſmithis, and of the marking of thair wark.

ITEM, As anent the reformatioun of gold and ſilver wrocht be Goldſmithis, and to eſchew the diſſaving done to the Kingis liegis, thair ſall be ordanit in ilk burgh quhair Goldſmithis wirkis, ane underſtandand and a cunnand man, of gude conſcience, quhilk ſall be Dene of the craft; and quhen the wark is brocht to the Goldſmith, and it be gold, quhat gold that beis brocht till him, he ſall give it furth agane in wark, na war na ellevin granis; and the ſaid Goldſmith ſall tak his wark, or he give it furth, and pas to the Dene of the craft, and gar him examin that it be ſa fyne as is befoir writin: And the ſaid Dekin ſall ſet his mark and taikin thairto, togidder with the ſaid Goldſmithis; and gif fault be fundin thairin efterwardis, the Dene foirſaid and Goldſmithis gudis ſall be in eſcheit to the King, and thair lyffis at the Kingis will: And the ſaid Dene ſall have to his fie, of ilk unce wrocht, ane penie. And quhair thair is na Goldſmithis bot ane in a town, he ſall ſchaw that wark, takinit with his awin mark, to the heid Officiaris of the town, quhilkis ſall have a mark in lyke maner ordanit thairfoir, and ſall be ſet to the ſaid wark: And quhat Goldſmith that gives furth his wark utherwayis, than is befoir writtin, his gudis ſall be confiſkit to the King, and his lyfe at the Kingis will. *Ja.* II. *fol.* 41. *act.* 73. 6 *Martij*, 1457.

C. CXI. That thair be ane Dekin and Serchour of Goldſmithis

ALSWA, it is aviſit and concludit be the Lordis of the articlis, that for the eſchewing of the greit damnage and ſkaithis that our ſoverane Lordis liegis ſuſtenis be the Goldſmithis in the miniſſing the fynes of the ſilver wark, that fra thyne furth thair be in ilk burgh of the realme, quhair Goldſmithis ar, ane Dekin and ane Sercheour of the craft; and that ilk Goldſmithis wark be markit with his awin mark, the Dekinnis mark, and the mark of the town, of the fynes of eleven penie fyne; and quhair thair is ony ſic wark within the ſaid fynes, the wark to be brokin, the warkman to upmak the avale of the fynes foirſaid, and the ſaid warkman to be puniſt thairfoir, at the Kingis will: And that na Goldſmith tak upon hand to be a maiſter, or to hald oppin buith of the craft, bot gif he be admittit be the Officiaris of the craft, and the haill bodie of the craft;

and

and gif ony be fundin uſand craft, haldand oppin buith, that ar unſufficient, that the perſounis be cauſit to ceis, and put under a maiſter of craft. And this act to be put to executioun within fourtie dayis nixt followand the proclamatioun of the ſamin. *Ja.* III. *fol.* 73. *act.* 114. 24 *Feb.* 1483.

C. CXII. Of Goldſmithis mixing of metallis.

As tuiching the article of Goldſmithis quhilkis layis and makis fals mixture of evill metall, corruptand the fyne metall of gold and ſilver, in the deceit of our ſoverane Lord and his liegis, that garris mak and wirk gold and ſilver; for the reformatioun and eſchewing of the ſamin, it is now aviſit and concludit, that na Goldſmith ſall mak mixture, nor put fals layis in the ſaid metallis. And to have knawlege of the fynes of thair wark, that ilk Goldſmith have ane ſpeciall mark, ſigne and takin, to be put in his ſaid wark quhilk he makis; and thay ſamin warkis to be of fynes of the new warkis of ſilver of *Bruges*; and that thair be ane Dekin of the craft of Goldſmithis, quhilk ſall examin the ſaid wark and fynes thairof, and ſee that it be als gude as the ſaid wark of *Bruges*: And thairefter the ſamin Dekin to put his mark and ſigne on the ſaid wark, and to anſwer thairupon upon his lyfe and gudis. And as tuiching the wark of gold, that it be maid als fyne as it is firſt moltin in preſence of the awnar, lyke as the tuiche and aſſay gevin to him quhen it is firſt moltin, and na war, to be delyverit in preſence of the Dekin; ſwa that the Kingis liegis be not diſſavit, and that it keip the ſaid fynes, as ſaid is. *Ja.* IV. *fol.* 87. *act.* 29. 15 *Feb.* 1489.

C. CXIII. Of the fynes of Goldſmithis warkis, and the mark thairof.

ITEM, Forſamekle as thair is greit fraud and hurt done unto the liegis of this realme be Goldſmithis, that makis ſilver and gold of na certane fynes, bot at thair pleſour, quhairthrow thair is ſum ſilver wark maid and ſet furth of ſic baſenes of allay, *videlicet*, of ſax and ſeven penie fyne, expres aganis the honour and publict weill of the realme; Thairfoir it is ſtatute and ordanit be the Quenis Grace, with aviſe of the thré eſtatis of parliament, that na Goldſmith mak in wark, nor ſet furth, outher of his awin ſilver, or uther menis ſilver, under the juſt fynance of ellevin penie fyne, under rhe pane of deid, and confiſcatioun of all thair gudis moveabill: And that everie Goldſmith mark the ſilver wark that he makis with his awin mark, and with the townis mark; and gif he makis ony ſilver abone the ſaid fynes, that he with his mark mak ane print of the juſt punct of the fynes that it is, that it may be kend to all quhat fynes it is of: And als, that na Goldſmith mak in wark, or ſet furth, outher of his awin gold or uther menis gold, under the juſt fynes of twentie twa carrat fyne, under the panis foirſaidis. *Mar. R. fol.* 167. *act.* 34. 20 *Junij*, 1555.

C. CXIV. Of Baxteris, and thair ſervandis, within ane oyne.

GIF a man hes ane oyne of his awin, he ſall keip in the ſamin the Kingis lawis maid thairanent be the honeſt and wyſe men of the burgh, *viz.* he ſall not hald ma ſervandis nor four, *viz.* ane maiſter, twa ſervandis, and ane knaive. The maiſter or lord of the oyne ſall have for his oyne, at ilk tyme, ane peny; the twa ſervandis, ane peny; and the knaive, ane farding: And the ſaidis perſounis ſould be leill, trew, and of gude fame, and ſould ſweir to be trew to our ſoverane Lord the King, and to the communitie of

the burgh. And ſiclike is to be underſtandin of ſervandis within a miln. *Leg. burg. c.* 64.

C. CXV. Puniſhment of Baxteris and Brouſteris.

GIF ony Baxter in baiking of the breid, or ony Brouſter in brewing of the aill, committis ony fault, na perſoun ſould mell thairwith bot the Proveſt and Baillies; and gif ony of thame failzeis twyſe, thay ſall be twyſe correctit thairfoir; and gif thay faill the third time, thay ſall ſuffer puniſhment in thair bodie; that is, the Baxter ſall be put to the pillorie, and the Brouſter upon the tumbrell or cokſtuill: And gif the Proveſt failzies to do juſtice heiranent, his bodie and gudis ſall be in the Kingis will, *Leg. burg. c.* 21. *Item*, It is leaſum to the Proveſt to correct and puniſh the ſaidis treſpaſſouris als oft as is requiſit, als weill on feſtivall dayis as utheris *Leg. burg. ex lib. Carneg. & meo albo lib. pag.* 194.

C. CXVI. Of Baxteris, and Brouſteris, and fiſcheris.

NA Proveſt, Baillies, nor Serjandis, ſall baik breid, or brew aill, to be ſauld in his awin houſe; bot Baxteris ſall baik breid, baith quhyte and gray, to ſell efter the price and conſideratioun of gude men of the town, as the tyme ſall be convenient; and the Baxter ſould have of winning of ilk chalder, 1 ſchilling, or mair, at the ſicht of honeſt men of the town. And he that baikis breid to ſell, ſould not hide it, bot ſet it in his window, or in the mercat, that it may be commounlie ſauld; and he that is convict to have done in the contrare, ſall pay ane unlaw of viij *s.* and the breid hidden ſall be delt to the puire folk: And ſiclike it is to be underſtandin of the fiſh that is to be ſauld. *Leg. burg. c.* 63, 65.

C. CXVII. That the Malt-makaris preſent thair malt to the mercat.

ITEM, It is ſtatute and ordanit, that all the Malt-makaris of *Leith*, *Edinburgh*, and uther places about *Edinburgh*, or uther burrow townis within the realme, preſent thair malt to the mercat in tyme to cum; and that ilk day be ane mercat day for victuallis, except the haly day: And that thay ſell not the ſaid malt quhil nyne houris, under the pane of eſcheit of all malt that is ſauld utherwayis; and that the Proveſt and Baillies of ilk ane town sé that this ſtatute be keipit; and that thay have powar to eſcheit the ſamin, and anſwer to our ſoverane Lord zeirlie thairfoir in his checkar, quhais handis that ever it be fundin in: And that the Malt-makaris tak na mair for the making of ane chalder of malt bot ane boll of beir; and quha dois in the contrare ſall be repute oppreſſouris of the Kingis liegis, and dittay tane thairupon to the Juſtice air. *Ja.* IV. *fol.* 107. *c.* 127. 11 *Mart.* 1503.

C. CXVIII. For Malt-makaris and prices.

ITEM, Becauſe our ſoverane Lordis liegis, inhabitantis in the burgh of *Edinburgh*, and utheris repairand thairto, ar greitlie oppreſt and injurit be the Malt-makaris of *Leith*, and utheris within and about the ſaid burgh, in ſelling of thair malt to hie and exhorbitant price, for four, fyve or ſax ſchillingis heicher than thay buy the beir: Thairfoir it is ſtatute and ordanit, that the ſaidis Malt-makaris in tyme cuming ſall mak and ſell thair malt for competent winning, takand twa ſchillingis allanerlie mair for the boll of malt than the boll of beir is ſauld, and not abone; with certificatioun, that quha cumis in the contrare heirof, that the Proveſt and Baillies of *Edinburgh* ſall eſcheit the ſaid malt; and the

ſaid

ſaid Malt-makars takand mair than twa ſchillingis for the boll abone the boll of beir, quhilk ſall mak the different price, ſall be callit and puniſt thairfoir, as oppreſſouris of the Kingis liegis, and particular juſtice courtis ſall be ſet to thame thairfoir: And our ſoverane Lord ſall give commiſſioun to ſic as pleſis his Grace beſt, to call all the ſaid Malt-makaris, brekaris of this ſtatute and act, befoir thame, in the tolbuith of *Edinburgh*, to do juſtice upon thame, as thay think expedient; and to cauſe the ſaid act and ſtatute to be obſervit and keipit in all punctis, *Ja.* V. *fol.* 123. *c.* 32. 7 *Junij*, 1535. *Item*, Anent the article proponit twiching the greit exhorbitant derth raiſit in this realme be Malt-makaris, and the greit oppreſſioun maid be thame daylie and continuallie upon our ſoverane Ladyis liegis, quhairthrow this realme is not gudlie ſervit, lyke as the ſamin hes bene in tymes bygane; and for remedie heirof, and for ſtanching of the pretendit murmure maid be ſic Maltmen, anent the making of the prices of all malt ſauld commounlie in this realme; it is devyſit, ſtatute and ordanit be my Lord Governour, with aviſe of the thré eſtatis of parliament, that becauſe of the greit derth of fewall preſentlie occurrand, everie Maltman ſall have, of everie boll of malt maid be him, for his labouris and fewall, four ſchillingis of ilk boll of malt, mair nor the the boll of beir is commounlie ſauld, to the effect that our ſoverane Lady, my Lord Governour, and liegis of this realme, may be honeſtlie and ſubſtanciouſlie ſervit as accordis, upon the prices foirſaidis; and the ſaid act and ordinance for the ſpace of ane zeir to indure. *Mar. R. fol.* 154. *act.* 22. 1 *Feb.* 1551.

C. CXIX. Anent puniſhment of Brouſteris.

GIF ony man or woman brewis aill to be ſauld, thay ſould brew the ſamin efter the cuſtume and law of the town; and gif ony dois in the contrare, and is convict thairof, he ſall pay ane unlaw of viij. *s.* and thole the law of the town, that is to ſay, thair perſounis ſall be put on the cokſtuill, and the ſtuff ſall be gevin to the puire folk. And the lyke is to be underſtuid of thame that brewis evill meid. And all Brouſteris ſall put out ane ſigne and taikin without thair houſe, befoir the dure or the window; the quhilk may be viſibillie ſene to all perſounis, to ſignifie to thame that thair is aill to ſell within that houſe; the quhilk gif thay failzie to do, thay ſall be unlawit in the ſoume of iiij. *d.* *Leg. burg. c.* 67.

C. CXX. Of zeirlie rent payit be Brouſteris.

QUHASAEVER brewis all the zeir, ſall be bund to pay to the Proveſt iiij. *d.* in all the zeir; and gif thay brew half ane zeir, thay ſall give ij. *d.* Bot it is leaſum to thame to brew thriſe, and pay nathing thairfoir; and gif thay brew four times, thay ſall pay the dewtie of the half zeir, *viz.* ij. *d.* and na mair. *Leg. burg. c.* 38. *Lib. de jud. c.* 16.

C. CXXI. Of taiſteris of aill.

ALL guſtaris and taiſteris of aill ſall ſweir, that thay ſall leillelie and trewlie taiſt the ſamin, and ſet ane juſt price thairupon, efter the price and mercat of befoir, and ſall not ſpair to do the ſame for feid, favour nor dreid. *Stat. gild. c.* 52.

C. CXXII. How fleſh ſould be ſauld be Fleſhouris.

QUHASAEVER will ſell fleſh, he ſall ſell gude and halthſum fleſh, ſic as ky, oxen and ſwyne, at the ſicht and conſideratioun of gude men

men of the burgh, and put the ſamin in the merkat, or his window, that thay may be commoun to all men willing to buy, *Leg. burg. c.* 68. *Item*, Gif ony miſſelled or foull ſwyne, or ſalmond, be brocht to the merkat to ſell, be ony perſoun, the Serjand of the burgh ſall tak the ſamin, and ſend it incontinent to the puire or leproſe folk, or utherwayis diſpone upon the ſamin in ony uther maner, without ony queſtioun, favour or grace: And gif the ſeller hes reſſavit ony payment thairfoir, he ſall rander the ſamin to the buyer without difficultie or delay; and gif he refuſis to do the ſamin, he may be diſtrinzeit be ane unlaw. *Leg. burg. ex lib. Carneg. et in meo albo lib. pag.* 198.

C. CXXIII. How the Fleſhouris ſould ſerve the burgeſſis in ſlaying of thair fleſh.

ITEM, The Fleſhouris ſall ſerve the burgeſſis in ſlauchter time, that is to ſay, fra *Martinmas* to *Zule*, in ſlaying, dichting and ordouring of thair fleſh to lay in thair laidner; and gif the Fleſhouris graithis not the fleſh weill, thay ſall reſtoir the damnage and ſkaith to the awineris thairof. And in the mene tyme that the Fleſhouris ſervis the burgeſſis, thay ſall ſitand eat with thame at thair awin buird, and thair Servandis with thair ſervandis; and the Fleſhouris ſall have for thair ſervice, of ilk kow and ox, ane half penie, and for ane ſwyne ane half penie, and for fyve ſcheip ane half penie. *Leg. burg. c.* 68.

C. CXXIV. Fleſhouris ſould not be Patticearis.

ITEM, It is not leaſum to ony Fleſhour to be ane Patticear, under the pane of ane amerciament; and ſiklyke ane Patticear may not be ane baker of bread to ſell: And gif thay do utherwayis, thay ſall be puniſt and unlawit be the lawis of the burgh. *Leg. burg. ex lib. Carneg. et in meo albo lib. pag.* 194, 195.

C. CXXV. The time of buying of fleſh in merkat.

NA man dwelland without burgh may buy mairtis, or ſlauchter thame, befoir thré houris in the morning in winter, and the firſt hour in ſummer; bot the Fleſhouris of the town may buy fleſh, to the uſe of the town, at ony time of the day. *Item*, Na Fleſhour ſall ſlay ony beaſt, or ſell fleſh in time of nicht, bot on fair daylicht, and in his awin buith, and ſall put the ſamin in his awin window, beand oppin; and quha beis convict to have done in the contrare, ſall pay ane unlaw. *Leg. burg. c.* 69.

C. CXXVI. The office of fleſh pryfouris.

ITEM, Twiching fleſh that is brocht to the merkat to ſell, the appryſouris within burgh, conſtitute to that effect, ſall ſet a price thairupon, and command the awner to ſell to all thame that lykis to buy, conforme to the ſamin price; and gif he refuſis, to compell him to do the ſamin; and gif he ony wayis excedis the ſaid price, he ſall be correctit and unlawit be the Baillie of the burgh. *Item*, It is leaſum to na man to ſell fleſh beſoir ane price be ſet thairupon be the appryſouris foirſaid, under the pane of ane unlaw. *Leg. burg. ex lib. Carneg. et in meo albo lib. pag.* 149.

C. CXXVII. The aith of fleſh appryſouris.

THAY that ar choſin to ſet ane price upon the fleſh, ſall ſweir that thay ſall appriſe the ſamin faithfullie, as the ſlauchter beaſtis or mairtis ar ſauld, and in doing of the ſamin ſall ſpair na perſoun, for feid, favour nor dreid. *Stat. gild. c.* 53.

QUHA-

C. CXXVIII. Of fiſh brocht to the merkat to be ſauld.

QUHASAEVER bringis fiſh to ſell to ony burgh, he ſall not bring thame to ony houſe, bot to the Kingis merkat, gif he bringis in the day; and gif he bringis thame in the nicht, thay may be harbreyit in ane houſe, bot in the morning, quhen time is, thay ſall be brocht all and haill to the merkat, and commounlie ſauld to all men that lykis to buy thame, under the pane of ane unlaw of viij. *s.* *Item*, Na perſoun ſall buy fiſh to be ſauld agane at the ſea, or ony uther place, bot at the Kingis merkat; and quha is convict to have done in the contrare, ſall pay ane unlaw of viij. *s.* *Item*, Na perſoun ſall buy ony fiſh to ſell agane, nor na fiſh ſall be cuttit befoir ſax houris in the morning in ſummer, and nyne houris in wynter, under the pane of ane unlaw of viij. *s.* *Item*, Na perſoun ſall ſell fiſh in time cuming, in time of nicht, for lucre or gain, under the pane of the unlaw foirſaid. *Leg. burg. c.* 76.

C. CXXIX. Of Stallangeris.

ALL Stallengeris ſall aggrie with the Proveſt as thay may beſt, or ellis ſall give, ilk merkat day, ane halfpenie, *Leg. burg. c.* 39. *Item*, Ane Merchand that hes a coverit ſtall, or buith, in the merkat, on the merkat day, ſall give ane halfpenie for cuſtume; and he that hes not ane coverit, ſall pay ane farding, *Leg. burg. c.* 40. *Item*, Ane Stallanger ſall not have lot, cut nor cavill of ony merchandice with ane burges, bot in the time of fairis, quhen all men hes lot and cavill, *Leg. burg. c.* 58.

C. CXXX. Of huckſtaris or regratarris.

REGRATARIS, quha buyis and ſellis agane for gane and lucre, ſall not buy ony thing to ſell agane befoir the third hour in winter, and the firſt hour in ſummer; and it is not leaſum to thame to buy lint, or ony kind of woll bot quhyte woll, nor na yarn, nor ſik thingis, except in the time of merkat; and quha happinis to be convict in the contrare, ſall pay ane unlaw of viij. *s.* and ſall tyne and forfault that quhilk he hes bocht. *Leg. burg. c.* 70. *Item*, Na regratar ſall buy fiſh, hay, corn, butter, cheis, or ony ſic thing that is carryit to the burgh to be ſauld, befoir the ringing of the bell within the ſtepill; and quha beis convict in the contrare, ſall tyne that quhilk he hes bocht, and the ſamin, at the ſicht of the honeſt men of the burgh, ſall be delt to the puire folk of the burgh. *Stat. gild. c.* 27. *Leg. foreſt. c.* 50.

C. CXXXI. Of foirſtallaris in burgh.

NA perſoun dwelland within the burgh, or without the ſamin, ſould paſs without the burgh, or portis thairof, on ane merkat day, and thair buy ony thing befoir the ſamin be brocht within the burgh, or portis thairof; and quha beis convict in the contrare, ſall pay ane unlaw of viij. *s.* *Leg. burg. c.* 75. and ſall be accuſit thairfoir in the court of the burgh quhair the crime is committit, or in the chalmerlane air. *Leg. burg. ex lib. Carneg.*

C. CXXXII. Puniſhment of foirſtallaris.

ALSWA, it is ſtatute and ordanit, that na foirſtallaris be fundin buyand victuallis, fiſh, fleſh, or uther ſtuff, befoir the ſamin be preſentit to the merkat, nor zit into the merkat, or the tyme of day ſtatute and ordanit thairto, under the pane of preſoning of thair perſounis, and eſcheting of all ſic gudis coft or arlit be thame; that is to ſay, the twa part to the Kingis Grace, and the thrid part to the Schiref or Officiar of the ſchyre, Proveſt, Baillies and Officiaris

aris of the burrowis, or to ony uther that findis thame doing in the contrare heirof, *Ja.* V. *fol.* 121. *act.* 23. 7 *Junij*, 1535. *Item*, It is ſtatute and ordanit, gif ony foirſtallaris be apprehendit foirſtalland ony maner of merchandice, victuallis, pultrie, or gudis quhatſumever, within the fredome of burgh, that the Officiaris of the ſaid burgh eſcheit the ſamin, the ane half to our ſoverane Lordis uſe, and the uther half to the burgh, conforme to the act of parliament maid thairupon of befoir; and that na uther Officiar have powar thairto within the boundis of fré burgh. *Ja.* V. *fol.* 139. *act.* 94. 14 *Mart.* 1540. *Mar. R. fol.* 157. *act.* 33. 1 *Feb.* 1551.

C. CXXXIII. The time of the ſelling of fiſh in the merkat. Anent the way curing of fiſh. Of the price of fiſh.

ALSWA, it is ſtatute and ordanit, that na maner of perſoun, to burgh nor to land, buy ony maner of fiſh in merkat, nor uther places, to pak or pele, quhill ellevin houris of the day; and fra ellevin houris to twa houris efter nune, it ſall be leaſum to buy fiſh, and pak or pele the ſamin, as thay think maiſt expedient. And not the les that all our ſoverane Lordis liegis, cagearis, and utheris, within that time of the day, be ſervit for thair money, of fiſh, to the furneſſing of the cuntrie: And ſiclike, fra twa houris efter nune, to ſax houris at evin, it ſall not be leſum to buy, pak or pele the ſaid fiſh, bot that all our ſoverane Lordis liegis, at the ſaidis times of day, may be ſervit of all maner of fiſh, and buy the ſamin for thair ſilver, for ſuſtentatioun of thair hous, and ſerving of the cuntrie about: And that na maner of perſoun in this realme, Merchand or utheris, ſend or have ony maner of quhite fiſh furth of the ſamin; bot it ſall be leſum to ſtrangeris to cum within this realme to buy the ſamin fra Merchandis and fremen of burrowis, with readie gold and ſilver, or be bartouring of ſufficient merchandice with the ſaidis Merchandis, or with the awneris thairof, for thair ſuſtentatioun neceſſaris of thair houſis allanerlie; and quhair ony perſounis hes ony fiſh pakkit or pelit, that thay be reddie at all times to ſell the ſamin to all our ſoverane Lordis liegis, for furneſſing and ſuſtentatioun of thair hous and the cuntrie, under the pane of confiſcatioun of the ſamin. And to ſtop the ryſing of prices in merkatis within burrowis, it is ſtatute and ordanit, that the Proveſtis, Aldermen and Baillies of burrowis, in everie merkat day, pas and viſie the mercatis, and ſet a price on all maner of fiſh, according to the time; and that thay diligentlie inquire gif ony maner of perſoun gevis arlis, or money, on ony maner of fiſh that cumis to the merkat, to the effect that the ſamin may be ſauld upon ane hiear price; that thay tak and puniſh the ſaidis perſounis, as couparis, foreſtallaris, and regraitouris, aganis the commoun weill. *Ja.* V. *fol.* 136. *act.* 78. 14 *Mart.* 1540. *c.* 98.

C. CXXXIV. Of Sutaris or Tanneris.

NA Sutar, Tanner, or Barker, may buy hydis of mair price, bot ſic as hes the hornis and the earis of equall lenth: And it is leſum to na Sutar to ſell ony hydis, *Leg. burg. c.* 96. *Item*, It is not leſum to ane Sutar to be ane Tanner or Barker, nather to uſe baith theſe Offices of ane Sutar and Tanner, efter the auld law and conſuetude of burgh. *Leg. burg. ex lib. Carneg. et in meo albo lib. pag.* 195.

C. CXXXV. Of Cameſteris and Wobſteris.

GIF ony Cameſteris, quha may have ſufficient wark within burgh, leives

leives the burgh, and paſſis and dwellis with upland men, thay may be takin and put in priſoun thairfoir: And the like is to be underſtandin of Wobſtaris. *Leg. burg. c.* 106.

C. CXXXVI. Of Wrichtis andMaſounis.

ITEM, For quhy that it is complenit to the King and his counſall, that Wrichtis and Maſounis takis at anis on hand monie warkis, quhilkis thay may not, nor will not, fulfil at the time thay hecht; throw the quhilk the Kingis liegis ar ſkaithit, and the honour and proffeit of the land lettit; Thairfoir it is ordanit be the King and the parliament, that it be cryit in ilk town oppinlie, that na warkman tak mair wark on hand than he may gudlie fulfil efter his cunnand, under the pane of tinſall of the price of ſamekle wark that he takis on hand than he may gudlie fulfil, to the King, and of the fulfilling of the wark that he takis on hand, upon his awin coiſt. And alſwa, quhair a warkman, outher wilfullie or unrichteouſlie, lettis to fulfil the wark he has tane on hand, that ane uther man of that ilk craft refuſe not to tak that on hand for reſſonabill fee, under the pane of puniſhing of him at the Kingis will, ſwa that he be a warkman knawin, and hes then nane uther wark on hand. *Ja.* I. *fol.* 13. *act.* 90. *ult. Septemb.* 1426.

Of warkmen delayand to end thair wark.

C. CXXXVII. That na Litſtar buy claith to ſell.

IT is ſene ſpeidful that lit be cryit up and uſit as it was wont to be, and that na Litſtar be Draper, nor buy claith to ſell agane, nor zit tholit thairto, under the pane of eſcheit. *Ja.* II. *fol.* 41. *act.* 74. 6 *Mart.* 1457.

C. CXXXVIII. Of drawaris of claith.

ALSWA, it is ſtatute and ordanit anentis drawaris of claith, and litſtaris of fals colouris, That in everie burgh thair be a qualifeit man choſin to ſeill all claith, and ſall have for his labouris, of ilk ſteik ſeilling, xij. *d.* And gif ony drawaris of claith beis apprehendit, that ane half of the ſaidis gudis to be our ſoverane Lordis eſcheit, and the uther half to the burgh; and the ſaid drawaris within burgh, for the firſt fault, to tyne thair fredome for zeir and day, and for the ſecund fault, for ever. And ſiclike of thame outwith burgh, dingand calk, creiſche, flaland, or cairdand claith, that the ſamin be eſcheit, and thay haldin to refund the ſkaith to the awnaris: And gif the ſaid ſeillar beis fundin culpabill, ſeilland unſufficient colour or drawin claith, he to tyne his fredome, and to be puniſt in his perſoun and gudis. *Ja.* V. *fol.* 139. *act.* 93. 14 *Mart.* 1540.

C. CXXXIX. Smithis that ſchois horſe in the quick.

ITEM, Becauſe ignorant Smithis, throw ignorance or drunkinnes, ſpillis and cruikis mennis horſe, throw ſchoing in the quick; it is tute and ordanit, that quhen ever a Smith ſchois a manis horſe in the quick, that Smith ſall mak and pay the coiſt of the horſe quhill he be haill, and in the mein time find the man ane horſe to ryde upon, and do his labour, quhill the ſaid horſe be haill; and gif the ſaid horſe cruikis throw the ſchoing, and will not haill, the Smith ſall hald the ſaid horſe himſelf, and pay the price of the horſe to the man that aw him. *Ja.* III. *fol.* 64. *act.* 87. 6 *Aug.* 1477.

C. CXL. Privilege to him that mareis ane craftiſmanis wife.

GIF ony craftiſman, within ony burgh of this realme, happinis to deceis, leivand behind him ane wife, quha thaireſter mareis ane husband

husband of the ſamin craft, that had bene prentiſe and worne out of the ſame lauchfullie, the ſaid prentiſe may uſe and exerce the foirſaid craft during all the dayis of the wife's lyftyme; albeit he had uſit and bene in prentiſhip within ony uther burgh of this realme than that quhair he is maryit; and als albeit he be not freman within the ſamin. 17 *Feb.* 1535. Thomas Baxter *contra the burgh of* Dundie, 1 *t. c.* 647.

C. CXLI. *The namis of the fré burrowis ſubject to pay extent within this realme.*

Beſouth *Forth.*	Benorth *Forth.*
Edinburgh.	*Aberdene.*
Striviling.	*Dundie.*
Linlithgow.	*Perth.*
Rotheſay.	*Banff.*
Dumbartane.	*Dumfermling.*
Renfrew.	*Carraill.*
Ruglen.	*Forfar.*
Air.	*Brechin.*
Irwing.	*Montrois.*
Glaſgow.	*Elgin.*
Kirkcudbricht.	*Invernes.*
Wigtoun.	*Aberbrothok.*
Quhitherne.	*Sanctandrois.*
Lanark.	*Cowpar.*
Jedburgh.	*Culan.*
Selkirk.	*Forres.*
Peblis.	*Nairn.*
Hadingtoun.	*Tayne.*
North-bervick.	*Dyſert.*
Dunbar.	*Kirkcaldy.*
Drumfreis.	*Bruntiland.*
	Inverkething.

Statutis and lawis of gild.

In the name of the halie and indiviſible Trinitie: Heir followis the lawis and conſtitutiounis of the gild of burgeſſis, maid and conſtitute be aviſe of Robert Durhame, *Mair of* Bervick *for the time,* Simon Marſchall, *and uther wyſe men, burgeſſis of the ſaid burgh, in the zeir of God* MCCLXXXI. MCCLXXXII. and MCCLXXXIV. *to the effect and end that mony perſounis and bodyis, convenand and remanand in ane place, may be conjoinit togidder, in ane unitie of mind and will, and in ane trew and conſtant love and brotherhoode the ane to the other.*

CHAP. I. Particular gildis diſchargit.

INPRIMIS, Becauſe the generall gild ſould be generallie keipit be ilk gild-brother, and all particular gildis, maid in hurt and prejudice thairof, ſould be defendit and forbiddin, to the effect that na particular aſſembleis of our burgeſſis may in ony wayis brek or ſtop

ſtop the generall ſtatutis and liberteis of our generall gild, or invent ony new counſall or devices aganis the ſamin; We ſtatute and ordane, that all particular gildis uſit and wont of befoir in ony tyme bygane, be abrogate and forbidden in all tyme to cum: And that na maner of perſounis procure, hald nor have, ony maner of way, ony uther gild divers from this our gild; to the end, that reſpect and conſideratioun beand had of divers and ſindrie memberis of the heid, we may follow ane counſell in all our effairis, havand ane ſure ſocietie, trew and firme freindſchip. *Stat. gild. c.* 1.

C. II. Magiſtratis of gild.

ITEM, It is ſtatute that the communitie of the gild be reulit and governit be twentie four honeſt men, of the beſt and worthieſt of the burgh, choſin to that effect, togidder with the Proveſt and four Baillies: And quhen the ſaidis twentie four perſounis ar callit for the commoun affairis, gif ony of thame compeiris not, thay beand wairnit ane night befoir, he ſall pay to the gild ane unlaw of xx *s.* *Stat. gild. c.* 32. *Item*, It is ſtatute and ordanit, that the Proveſt and Baillies, (*Major et Præpoſiti*) ſall be choſin be the haill communitie: And gif ony contraverſie happinis to be in the electioun of thame, thay ſall be choſin be twentie four men of the burgh, electit be the communitie, and ſworne to cheis ſic perſounis as ar worthie to governe and reull the communitie. *Stat. gild. c.* 33.

C. III. Quha may be gild brether, and quha not.

ITEM, It is ſtatute, that nane be reſſavit to be brother of gild for les than the ſowme of fourtie ſchillingis, except thay be ſones or dochteris of ane gild-brother, *Stat. gild. c.* 9. *Item*, Gif ony perſoun, quha in his lyftyme was not gild-brother, levis in his teſtament or latter-will, ony of his gudis or geir, in name of legacie to the gild, we reſſave and admit him to be ane brother of gild, and ſall give to his our counſall for asking and craving of his debtis, and in thair uther neceſſities, *Stat. gild. c.* 4. *Item*, Na Sutar, Litſtar nor Fiſcher may be ane gild brother, except thay refuſe to uſe and exerce thair office with thair handis, albeit thay may do the ſamin be ſervandis under thame. *Leg. burg. c.* 97.

C. IV. Of the counſall of gild.

It is ſtatute, that quhen the Alderman, Theſurare, Farthingman or Dene, will call and convene the gild brether for the commoun affairis, thay at the ſound of the ſueſh ſall compeir, under the pane of xij. *d.* *Stat. gild. c.* 15. or at the ſound of the bell rung in the ſtreitis be the Bellman to that effect, or of the great bell in the ſtepill of the kirk; the quhilk being thriſe rung within certane ſpace ilk time betwix, gif ony gild-brother within the burgh cumis not to the counſall-houſe befoir the thrid bell ceis the ringing, he ſall be in ane unlaw. *Stat. gild. c.* 15.

C. V. Patrimonie of gild.

It is ſtatute that all unlawis not exceidand viij. *s.* ſall in all tyme cuming pertene to the gild, except thay be of the Kingis toll, or be the law pertene to the Proveſt of the burgh, *Stat. gild. c.* 2. *Item*, All amerciamentis tane from ſtrangeris merchandis pertenis to the brether of the gild, and burgeſſis of the burgh. *Stat. gild. c.* 45.

C. VI. Of buying and ſelling.

ITEM, He that is not ane gild-brother may not buy woll, hydis

dis, or wollit ſkinnis to ſell agane, nor cut claith, except he be ane burges, quha howbeit not gild, may do the ſamin for his ſuſtentatioun in his office. *Stat. gild. c.* 43.

C. VII. Lot and cavill.

ITEM, Ane alien merchand ſould not have lot or cavill with a gild-brother, *Stat. gild. c.* 21. And ane gild-brother ſould have na lot with ane uther, in les nor ane half quarter of ſkinnis, ane half daker of hydis, and in twa ſtanes of woll. *Stat. gild. c.* 43.

C. VIII. Woll and hydis.

NA woman havand ane husband may buy woll in the ſtreit; and na burges may have but ane ſervand for buying of woll and hydis: And gif ony buyis the ſamin at ane unreſſonabill price, and abone the ordinance of the burgh, thay, or thair ſervand, buyar thairof, ſall pay ane unlaw of viij. *s.* And the woll or hydis that is bocht, ſall be tane and applyit to the uſe of the gild, *Stat. gild. c.* 29. *Item*, Na Fleſchour, ſa lang as he uſis his office, may buy woll or hydis, except he renunce his office, makand faith that he ſall not touch nor handle ony beaſt with his hand, *Stat. gild. c.* 25. *Item*, Na merchand dwelland without burgh, bringand within the ſamin bark-it hydis, (*coria tannata*) to ſell, may ſell thame within ony houſe bot in the commoun merkat, and on the merkat day allanerlie: And albeit the hydis be cuttit in pieces, the ſellar thairof ſould pay toll thairfoir, *Stat. gild. c.* 40. *Item*, Na Barker ſould bark ony hydis bot thame that hes the hornis and earis of equal quantitie. *Stat. gild. c.* 41.

C. IX. Skinnis and woll.

ITEM, Na Skinner, Gluifmaker, nor ony uther burges, ſall pluck the woll off the ſkinnis fra *Whitſounday* till *Martinmas*, bot ſall ſell the ſkinnis with the woll the beſt way he may: And gif ony Skinner or Gluifmaker be convict heiranent, he ſall be depryvit fra his craft and office for zeir and day: And gif ony burges dois in the contrare, for ilk tyme he is convict thairof he ſall give ane puncheon of wyne to the gild. *Stat. gild. c.* 35.

C. X. Of victuallis, fiſh, and uther merchandice, inbrocht in ſchipis.

ITEM, All merchandice brocht within ony burgh in ſchipis be ſea, ſould be brocht to land befoir thay be ſauld, except ſalt and hering, the quhilk may be ſauld within the ſchip, *Leg. burg. c.* 9. *Item*, Na man may buy hering, or ony fiſh; nor quheat, peis, beanis or ſalt, brocht within burgh within ane ſchip, befoir the ſchip ly on dry ground and ſchoir, and oar or tow be caſſin furth of the ſamin: And gif ony be convict of the contrare, he ſall give ane unlaw of ane puncheon of wyne to the gild, or ſall be baniſhit for zeir and day furth of the town, *Stat. gild. c.* 24. *Item*, Gif ony buy ſalt, hering, cornes, victuall, beanis, peis, or ony kind of fiſh or the like, inbrocht within ony ſchip, he ſall give to his nichtbour, requyrand the ſamin, ane part thairof, for the ſamin price as he bocht it, to his nichtbouris meit, and ſuſtentatioun of his houſe: And gif he refuſis to do the ſamin, he ſall pay ane puncheon of wyne to the gild. And ſiclike, gif the ſaid nichtbour deſire ane part of the ſaid merchandice to his meit and ſuſtentatioun, mair nor is ſufficient thairfoir, and obtenis the ſamin, he ſall pay the like unlaw to the gild, *Stat. gild. c.* 24. *Item*, Gif ony buyis hering, or the foirſaidis merchandice, and gevis arlis thairupon, he ſall content

tent and pay the Merchand that ſauld the ſamin, the price ſet of befoir thairupon; and gif he dois not, and is convict thairof, he ſall pay to the gild ane puncheon of wyne, *Stat. gild. c.* 24. *Item*, Na man may buy ony kind of victuall, as beanis, peis, ſalt, coillis, or uther merchandice, within burgh in ſchip be ſea, bot befoir the ſchip-buird; and quhen he hes bocht the ſamin, he ſould not carrie nor tranſport the ſamin befoir ſone ryſing, but allanerlie efter ſone ryſing, and till befoir the ſetting thairof; and quha beis convict in the contrare, ſall give ane puncheon of wyne to the brether of gild. *Stat. gild. c.* 45.

C. XI. Hering.

GIF ony burges buy hering, all his nichtbouris that ar preſent at the buying thairof, ſall have ane part thairof for the ſamin price that he bocht thame at, without fraud, as ſaid is: And gif ony that was not preſent wald have ane part thairof, he ſall give to the buyer xij. *d.* for his gane and proffeit; and quha is convict in the contrare, ſall pay ane puncheon of wyne to the gild: And gif ony makis not payment to the ſellar of the hering, of the ſilver aucht- and thairfoir, and is convict thairof, he ſall pay the lyke unlaw to the gild: And this is to be underſtandin of the brether of gild, and of nane uther. *Stat. gild. c.* 36.

C. XII. Beir.

NA woman may buy in the merkat beir or aitis, to brew aill to ſell, mair nor ane chalder: And gif ſcho buy ony mair, ſcho ſall lois and tyne all that ſcho hes bocht; and the thrid part ſall pertene to the keipar of the merkat, and the twa part to the Baillies. *Stat. gild. c.* 38.

C. XIII. Beaſtis.

NA Fleſhour, from *Mertinmas* to *Zule*, ſall pas furth of the burgh, and be the way buy ony beaſtis or mairtis cumand to the burgh to be ſauld; nor zit within the ſaid ſpace may buy in the merkat, ony day, beaſtis or mairtis, befoir denner time; nor zit fraudfullie ſall caus the ſame to be keipit quhill efter dinner: And quha beis convict to have done in the contrare, ſall be depryvit of his office for zeir and day. *Stat. gild. c.* 39.

C. XIV. Foreſtalleris.

IT is not leaſum to ony perſoun to buy ony merchandice that is carryit to the burgh to ſell, outwith the portis of the burgh, or ony ſtreit or gate thairof, untill the ſamin be brocht to the merkat of the burgh: And gif ony beis convict to have done in the contrare, he ſall tyne that quhilk he hes bocht, and the ſamin ſall be applyit to the uſe and proffeit of the gild. *Stat. gild. c.* 28.

C. XV. Furth dwelland Merchandis.

IT is ſtatute, that na burges nor gild-brother, dwelland furth of the burgh, buy ony merchandice within the burgh pertenand to the gild, bot allanerlie on the merkat day: And na furth dwelland man ſall buy ony victuall cumand to our burgh be ſchip: And quha beis convict in the contrare, ſall pay ane puncheon of wyne to the gild. *Stat. gild. c.* 47.

C. XVI. Pleyis and actiounis of gild brether.

NA man ſould ſpeik within court ony thing concerning the actioun and cauſe, bot allanerlie the perſewar, the defendar, and thair advocatis, togidder with the Baillie and Judge that haldis the court, quha

quha ſould ſpeik that quhilk pertenis to the inquiſitioun and decyding of the cauſe: Bot the perſewar or defendar may call furth ony man to ask his counſall and aviſe in the mater: And gif ony contravenis this ſtatute, he ſall pay ane unlaw of viij. *s. Stat. gild. c.* 18. *Item*, Na burges ſall deſyre or cauſe ony man, dwelland without the libertie of the burgh, to cum and procure, or ſpeik for him in judgment, aganis ony of his nichtbouris, under the pane and unlaw of ane puncheon of wyne. *Stat. gild. c.* 30.

C. XVII. Crymis and treſpas done within the gild: And firſt, of injureis done be word.

GIF ony gild-brother be word offendis ane uther brother, in cuming, remaning, or returning fra the gild, anis, twyſe or thryſe, he ſall mak ane amendis to the gild in xl. *d.* And gif he faultis the fourt time in word or deid, he ſall be condampnit and puniſt thairſoir, at the arbitrie and will of the Alderman, the Theſaurare, Dene, and uther brether of gild, and ſall mak ane amendis at thair command to him that is hurt and injurit. *Stat. gild. c.* 5.

C. XVIII. Injurie done be deid.

GIF ony brother of gild ſtrikis ane uther with his hand or neif, he ſall pay to the gild half ane mark, and ſall mak ane ſufficient amendis to him that is injurit, at the ſicht of the Alderman, Theſaurare, Dene, and other brether of gild. *Item*, Gif ane gild-brother drawis ane utheris blude violentlie, he ſall pay to the gild xx. *s.* and ſall ſatisfie him that hes gottin the hurt, at the ſicht of the Alderman, Theſaurare, Dene, and uther gild brether, efter the quantitie of the treſpas: And of the foirſaidis unlawis and amendis thair ſould be nathing forgevin, for requeiſt or prayer of ony perſoun, *Stat. gild. c.* 6. *Item*, Gif ony, with club, ſword, or uther iron weapon, violentlie drawis ane utheris blude, he ſall be condampnit thairfoir, at the ſicht of the Alderman, Theſaurare, Dene, and uther brether of gild, *Stat. gild. c.* 7. *Item*, Na injurious or contumelious perſoun ſall bear or wear ane pointit knyfe within the portis of the gild; and gif he dois in the contrare, he ſall pay to the gild twelf penies. *Ibid.*

C. XIX. Conſpiracies.

GIF ony makis conſpiracie, contrare the communitie, in hurt and ſkaith of onie perſoun thairof, and is convict heirintill, he ſall pay ane unlaw of ane puncheon of wyne, *Stat. gild. c.* 31. *Item*, Gif ony burges maliciouſlie contemne or neglect the gild, and fraternitie thairof, na gild brother ſall give him counſall or help, be word or deid, within burgh or without the ſamin, albeit he be in perrell of his lyfe or memberis, *Stat. gild. c.* 14.

C. XX. Revealeris of the gildis counſall.

GIF ony burges, contrare the aith maid be him, revelis the quiet counſall or ſecreitis of gild, for the firſt tyme he ſall be puniſt at the conſideratioun of the Alderman, and uther trew gild brether; for the ſecund time he ſall foirfalt his libertie of the burgh for ane zeir and day; and beand convict the thrid tyme he ſall foirfalt his libertie induring his lyftime, and ſall never, in ony time efter, within that burgh, or ony uther burgh within this realme, bruik or jois ony libertie or fredome; for he is haldin and eſtemit ane infamous perſoun. *Stat. gild. c.* 34.

C. XXI. Of thame that piſchis on the gild-hous.

GIF ony piſchis, or makis water, in the port of the gild, or wallis

lis thairof, induring the time of the gild and conventioun thairof, he ſall pay to the gild iiij. *d.* *Stat. gild. c.* 8.

C. XXII. Gild brether ſould have horſis.

ITEM, Ilk burges havand unmovabill gudis, to the valour of xl. *l.* ſould have ane gude and ſufficient horſe in his ſtabill, at the price and valour, at the leaſt, of xx. *s.* And gif ony, be chance or adventure, want or tyne his horſe, outher be death, gift, ſelling, or ony uther wayis, he ſall get and have ane uther within fourtie dayis thairefter, utherwayis he ſall pay ane unlaw of viij. *s.* Sterling. *Stat. gild. c.* 19.

C. XXIII. Of help of gild brether.

GIF ony gild-brother be of greit age, or fallin in povertie, or be vexit be ony incurabill ſeiknes, and hes not of his awin quhairupon he may be ſuſtenit, he ſall be relevit at the ſicht and diſcretioun of the Alderman, Dene, and gild brether, conforme to the riches and facultie of the gild, *Stat. gild. c.* 10. for thay ſould help him of the gudis of the gild, or mak ane gathering to him fra the communitie of the burgh: And gif he happinis to die, thay ſould caus burie him honeſtlie, *De judic. c.* 39. *Item*, Gif ony gild brother deceis, leivand behind him ane lauchfull dochter, of gude converſatioun and fame, quha hes not of her awin ony gudis or geir quhairby ſcho may be maryit with ane husband, the Alderman, Dene and gild brether ſall provide to hir ane husband, effeirand to the riches and facultie of the gild, *Stat. gild. c.* 11. *Item*, Gif ony gild brother be troublit and vexit without the burgh, in ony criminall cauſe of lyfe or lymme, twa or thré of the honeſt men of the gild ſall pas and remane with him twa dyettis, upon the expenſis of the gild: And gif thay gang or return efter twa dyettis, thay ſall gang and return upon his proper expenſis that is accuſit: And ſiclike, gif it be neceſſare, thay ſall aſſiſt him efter upon his expenſis. And gif it be found that he was juſtlie accuſit, he ſall pay of his awin all the expenſis maid be his brether at all the dyettis foirſaidis, at the ſicht and conſideratioun of the Alderman, and brether of the gild. *Stat. gild. c.* 13.

C. XXIV. The latter will and burial of the gild brether.

ITEM, All gild brether aucht and ſould, in thair latter will and teſtament, in ony part thairof, as thay pleaſe, leave in legacie to the gild, ſum of the gudis and geir pertening to thame, except be negligence thay pretermit to do the ſamin, *Stat. gild. c.* 3. *Item*, Gif ony gild brother deceis, not havand of his awin ſufficient gudis and geir to mak the expenſis of his buriall, the brether of gild ſall caus him be honeſtlie buryit upon the commoun expenſis of the gild. *Stat. gild. c.* 12.

Of the cuſtumis.

C. I. Cuſtume of nolt, horſe, and ſcheip, had furth of the realme, and of hering.

FOR thy, that mony thingis paſſis out of the realme withouttin cuſtume, it is ordanit and decretit, that of all nolt, horſe and ſcheip had out of the realme, thair be payit to the King xij. penies for cuſtume, of ilk pund of the price of the ſaidis gudis: And of all hering thar ar tane within this realme, that is to ſay, of ilk

thouſand of freſh hering ſauld, of the ſellar ane penie; and of ilk laſt of hering tane be *Scottiſmen*, barrellit, four ſchillingis; of ilk laſt be ſtrangeris takin, vi. ſchillingis; and of ilk thouſand reid hering maid in the realme, iv. penies. *Ja.* I. *fol.* 5. *act.* 23. 26 *Maij*, 1424.

C. II. Cuſtume of mertrik ſkynnis, and uther furringis.

ITEM, It is ordanit, that na man have mertrick ſkinnis furth of the realme; and gif he dois, that he pay to the King twa ſchillingis for the cuſtume of ilk ſkin; and for ten foumartis ſkinnis, callit fithowis, ten penies. *Item*, For ane hundreth cuning ſkinnis, xij. penies. *Item*, For ilk daker of otter ſkinnis, and tod ſkinnis, vi. *d.* *Item*, For ilk daker of hart and hynd ſkinnis, xij. *d.* *Item*, Of ilk ten dais and rais ſkinnis, iv. penies. *Ja.* I. *fol.* 5. *act.* 24. 26 *Maij*, 1424.

C. III. Cuſtume of wollin claith, ſalmond, and *Ingliſh* gudis.

ITEM, It is ordanit, that of ilk pundis worth of wollin claith, had out of the realme, the King ſall have of the out-havar, for cuſtume, twa ſchillingis: And of ilk pundis worth of ſalmond, bocht be ſtrangeris, and had out of the realme, xxx. penies: And of ilk pundis worth of *Ingliſh* gudis brocht in the realme, xxx. penies. *Ja.* I. *fol.* 7. *act.* 44. 12 *Mart.* 1424.

C. IV. Cuſtumis of gold and ſilver carryit out of the realme, and of merchandice inbrocht be ſtrangeris.

ITEM, It is ordanit, for the halding of the money within the realme, that na man have out of the realme gold nor ſilver, bot he pay xl. *d.* of ilk pund to the King for cuſtume, under the pane of tinſall of all gold and ſilver that beis fundin with him, and ten pundis to the King for the unlaw: And quhat ſtranger, that brings is merchandice in the realme to ſell, and takis money thairfoir, he ſall have witneſſing of the hoſte of his innis, that he wair all ſic monie for penieworthis of this realme, or ellis pay the cuſtume foirſaid to the King, under the pane befoir writtin: And for the keiping of this ſtatute, that the Kingis Chalmerlane-depute, or himſelf, gar ordane, in ilk town quhair ſic ſtrangeris repairis, twa ſufficient men, baith to ſé the entrie of thame of ſic gudis, and to heir the rekning of thame, and to reſſave the Kingis cuſtume and uther thingis that belangis thairto, and to mak rekning, and give compt thairof at the Kingis checker. *Ja.* I. *fol.* 8. *act.* 55. 11 *Mart.* 1425. *&* *fol.* 4. *act.* 17 *&* 18. 26 *Maij*, 1424.

C. V. Aſſiſe hering pertenis to the King.

THE aſſiſe hering of the eaſt ſea, and als of the weſt ſea, aucht and ſould pertene to the King, as ane part of the patrimonie of his crown: And thairfoir he ſould have of everie boat that paſſis to the draive and ſlayis hering, ane thouſand hering of ilk tak that halds is, *viz.* of the *Lambmas* tak, of the winter tak, and of the *Lentroun* tak: And gif it happinis ony of the ſaidis takis not to hald, the fiſcheris ar na wayis obliſt to pay his Hienes ony aſſiſe hering for that tak, becauſe thay ar obliſt allanerlie to mak payment thairof for the takkis that haldis, and for nane utheris, 12 *Decemb.* 1516, *the Kingis Advocate* contra Williame Harper *and his Colligues*, 1 *t. c.* 374.

C. VI. Cuſtume of ſalmond.

ITEM, It is ſtatute and ordanit, that cuſtume be payit to the King, als weill of indwellaris within the realme, as of frémmit men, in

in ony burrowis of the realme, and as of ſtrangeris and unfremen, of all ſalmond and fiſh ſauld and bocht, and had outwith the realme, out of ony burgh of the realme, *Ja.* I. *fol.* 13. *act.* 86. *ult. Sept.* 1426. *Vid. ſupra. Ja.* I. *act.* 84. 12 *Mart.* 1424.

C. VII. Diſcharge of the cuſtuming of the burrowis of the weſt cuntrie in the north fiſhingis.

ITEM, The haill burrowis of the weſt cuntrie, ſic as *Irwin*, *Air*, *Dumbertan*, *Glaſgow*, and uther burrowis at the weſt partis, hes zeirlie in all tymes bygane reſortit to the fiſching of *Loch Fyne*, and utheris lochis in the north iſlis, for making of hering and utheris fiſcheis; and efter the completing of thair beſineſs, at thair pleaſour partit frelie, bot payment of ony maner of exactioun, except the payment of the fiſchearis allanerlie: Notheles certane cuntrie men adjacent, and dwelland beſyde *Loch Fyne*, hes raiſit ane greit cuſtume of everie laſt of maid hering, that ar tane in the ſaid loch, of als greit valour as the Quenis Grace cuſtume; ſuppois the ſaidis burrowis bring the ſaid hering for furniſhing of thair awin houſis and the cuntrie; quhilk cuſtume was never payit of befoir, quhairthrow the ſaidis fré burrowis ar heavylie hurt: And for remeid heirof, it is deviſit, ſtatute and ordanit, that all ſic cuſtumis and exactiounis be diſchargit, and not raiſit nor upliftit fra the perſounis foirſaidis, of ony hering or fiſheis takin be thame in the lochis foirſaidis, for furneſſing of thair houſis, bringing of the ſamin within the realme allanerlie, under the panis to be callit as oppreſſouris, and puniſt thairfoir, conforme to the lawis of this realme. *Mar. R. fol.* 166. *act.* 28. 20 *Junij*, 1555.

C. VIII. Cuſtume of ſalmond and utheris pertening to the King.

The cuſtumis of all ſalmond, ſauld be ony perſoun to ſtrangearis, and als the cuſtumis of ſalmond caryit haill, and ſent furth of ony burgh, pertenis to our ſoverane Lord, and aucht and ſould be bruikit and joiſit be him, as ane part of the patrimonie of his crown; becauſe all and haill the cuſtumis of *Scotland* ar annexit to his Hienes crown, and may not be annalzeit, without aviſe, decreit and deliverance of the haill parliament: And gif ony beis annalzeit, he may put his handis thairto, without ony uther proces, 23 *Mart.* 1509. *The King* contra *the burgh of* Aberdene, 18 *Auguſti*, 1540. *The King* contra *the burgh of* Linlithgow, 1 *t. c.* 159.

C. IX. The pane of him that payis not his cuſtume.

Gif ony perſoun buy ony thing, and pas throw the place quhair he ſould pay cuſtume, and payis not the ſamin, and is convict thairof; for ilk farthing he ſould have payit he ſall give fyve ſchillingis, and for ilk halfpenie ten ſchillingis, and for ilk penie xx. *s.* and ſwa furth conſequentlie; and attour, he ſall loſs that thing for the quhilk he ſould have payit cuſtume, quhilk ſall be eſcheit to the Kingis uſe, *Leg. burg. c.* 139. *Stat. Will. R. c.* 14. *de jud. c.* 20, 21. *Item*, Gif ony man that is fré from payment of cuſtume, paſſand to a fair with his awin beaſtis and cattel, reſſavis in his cumpanie beaſtis and cattell pertening to ony uther man, and payis na cuſtume thairfoir, bot at the place of toll affirmis the ſamin to be his awin proper gudis and cattell, and is convict heirof, his bodie, his cattell, and all his gudis and geir, ſall be in the Kingis will; for he is a diſſaver and ſeducear of his Hienes. *De jud. c.* 17.

C. X. Of thame that hes merchandice out of the realme uncuſtumit.

THE King, with conſent of the thré eſtatis, hes ſtatute and ordanit, that thay that hes out of the realme merchandice, not payand the cuſtume, outher gold or ſilver, gif thay be preſent and convict, or gif thay be out of the cuntrie, gif the King hes cleir document thairof, that without ony dome thay be baniſt, and uther panis maid aganis thame ſtandand nevertheles in thair force, outtakand thame that is in hoſtage for the King in *Ingland*, for quhais coſtage how it ſall be maid, the King ſall ordane the maner. *Ja.* I. *fol.* 17. *act.* III. 5 *Martij*, 1427.

C. XI. The pane of him that ſtoppis the Kingis cuſtume.

GIF ony man ſtoppis or makis impediment to the Kingis cuſtumar, in gathering of his Graces cuſtumis, he aucht and ſould be puniſt thairfoir at the pleaſour and will of his Hienes, 19 *Decemb.* 1505, *Johne Mackie* cuſtumar of *Wigtoun*, contra *Symon M'Griſtie*, 1 *t. c.* 244.

C. XII. That na cuſtumar tak ony mair taxatioun than is ſtatute.

ITEM, It is ſtatute and ordanit, that na cuſtumaris within burgh tak ony mair taxatiounis, cuſtumis or dewteis, than is ſtatute and uſit in the auld law; and quha that dois in the contrare, to be puniſt as ane oppreſſour and brekar of the Kingis law, and dittay to be tane thairof. *Ja.* IV. *fol.* 98. *c.* 78. 26 *Junij*, 1593.

C. XIII. That nane houſe woll, skin, nor hydis in *Leith*.

ITEM, It is ſtatute and ordanit, for cauſing of the Kingis cuſtumis to cum in haill to him, as accordis, and to eſchew the defrauding that hes bene done thairof in tymes bygane, thar na man houſe woll, hyde, nor ſkinnis in *Leith*, nor uther places outwith fré burrowis, under the pane of eſcheit. *Ja.* IV. *fol.* 107. *c.* 123. 11 *Mart.* 1503.

C. XIV. Of cuſtumis pertenand to *Edinburgh*.

THE cattell and gudis that cumis to the fair and merkat of the burgh of *Edinburgh*, aucht na cuſtume to the Schiref of *Edinburgh* to the land; bot the Proveſt, as Schiref of the burgh of *Edinburgh*, aucht and ſould have the cuſtume of all the ſaid cattell and gudis cumand to the merkat, and within the fredome of the ſaid burgh, the time of the fairis of the ſamin: And in time cuming, nouther the ſaid Schiref of *Edinburgh* to the land, nor na utheris, may rais or tak ony cuſtumis of the cattell or gudis foirſaidis, without the merkat and boundis of the fredome of the ſaid burgh; be reſſoun the ſamin aw na cuſtume quhill thay cum and be preſentit to the ſaid burgh, merkat and fredome thairof. And attour, the ſaid Proveſt and Schiref of *Edinburgh* aucht and ſould limit and bound certane places, within the boundis and fredome of the ſaid burgh, to the quhilk nolt, ſcheip and horſe ſould be brocht, and be ſauld the tyme of the fairis. And als, the tyme of the ſaidis fairis and merkattis, thair aucht na cuſtume to be raiſit or tane, bot efter the auld uſe and conſuetude, 10 *Novemb.* 1487, *the Proveſt and Schiref of* Edinburgh, *contra the Schiref of* Edinburgh *to land*, 1 *t. c.* 45.

C. XV. Of thame that ar fré fra payment of cuſtume.

ALL Erlis, Baronis, vaſſalis, frehalderis, and maill payeris, indureing thair lifetime, togidder with all tenentis and poſſeſſouris of landis given in name of almons, quha dwellis in landwart, and cumis to the burgh within that ſchirefdome to buy and ſell meat and claith for thair awin proper uſe, ſall be quyte and fré from ge-

ving

ving of ony toll or cuſtume within theſe burghis, axcept thay, or ſome of thame, be commoun Merchandis, quha thairfoir ſould pay cuſtume. *Leg. Forreſt. c.* 13. *De jud. c.* 3.

C. XVI. Cuſtumis of ſchippis, maid be King DAVID I.

INPRIMIS, Gif ony ſchip of *Ingland*, or uther realme, arrive at ony havin within this realme, with quheat, peis, beanis, or with ony maner of corn pertening to ony man, he ſall give for his ſait in the havin xij. penies, and twa bollis of the beſt ſtuff that is thairin, or the price thairof, as he ſellis the reſt; and gif the ſchip be of this realme, thay ſall give twa bollis, as ſaid is, and for the ſait in the havin iiij. penies: And gif the corn, or ony uther ſtuff, pertene to divers partneris, ilk partner ſall give twa bollis of the beſt, or the darreſt price thairof, *Leg. burg. c.* 138. And gif the ſchip be chairgit with ſalt, and arrives thairwith befoir *Martinmas* in winter, thay ſall give twa bollis as ſaid is, and ſall aggrie with the Baillies of the burgh, efter the quantitie of the ſalt; or thay ſall give for ilk chalder of ſalt, xviij. *d.* xx. *d.* or ij. *d.* as thay may beſt ſell the ſalt at the land. And gif the ſchip arrives efter *Martinmas*, he ſall pay mair or or heicher prices, or aggrie thairfoir, efter the quantitie of the ſalt. *Ibid.* *Item*, Na ſchip ſall diſcharge or loſe the ſamin in ony hous, to be ſauld be bollis, chalderis, or uther littill meſoure, bot the awner thairof ſall ſell the ſamin in gros to Merchandis of this realme. *Ibid.* *Item*, Gif ony ſchip mak reſidence throw hir anchor attachit in the erd, and hes ſauld part of hir ſalt, and wald tranſport the reſt to ane uther place or cuntrie, he ſall give for ilk chalder, at the furth-paſſing, ane peny: And ilk ſtrangear that aucht cuſtume for ſalt, ſall pay at the furth-paſſing, for ilk chalder, ane peny; bot for ane boll he ſall give nathing. *Ibid.* *Item*, Gif ony ſchip, chairgit with wine, honey, oyle, or coillis, arrive within ony havin of this realme, he ſall give for his ſait in the havin xij. penies; and for ilk tun at the entrie, iiij. *d.* and at the furth-paſſing als mekill: And gif ony tun be put in hous or tavern, the toume tun ſall be the Kingis: And gif coillis, oyle, ſteill, or ſoape, or ony uther merchandice, brocht in tunis to be tappit, happinis to be ſauld, the, the towme tun ſall be the Kingis, and ilk tun ſall pay at the entrie iiij. penies: And ſiclike ane barell of cinders, ij. *d.* ane barell of ſteill viij. *d.* ane barell of oyle, at the entrie, ij. *d.* and at the furth-paſſing, ij. *d.* *Ibid.* *Item*, Gif ony burges of this realme that is quyte and fré fra cuſtume, hire or fraught ane ſchip with wine, corn, or ony uther merchandice, and cumis to ony uther havin within this realme, gif the maiſter of the ſchip ſell or buy ony thing to ſell agane, quhairby he may gane or win xij. penies, except it be for his meit, he ſall give for his ſait xij. penies; and gif he ſell nor buy nathing to the valour of xij. penies, he ſall pay nathing for his ſait. *Ibid.* *Item*, Gif ony ſchip come with wad, he ſall give for ilk frayl, at the entrie, xxij. penies, and at the furth-paſſing, xxv. penies; and for ilk meſoure that is callit ane ſetting, 1 peny halfpeny; and for ilk frayl of wad that remanis within the burgh unſauld, pertenand to ony furth-dwelland man, efter *Martinmas*, xviij. *d.* *Ibid.* *Item*, For onyounis, leikis, or garlik, nathing ſould be payit for the entrie thairof; bot for ane ſowme of garlik, that is, xxiiij. raipis, at the furth-paſſing, ane halfpeny: And ſiclike, for ane thouſand onyounis, ane halfpeny.

1. Of victuall.

2. Of ſalt, *&c.*

3. Wine, *&c.*

For ane ſcheiff of ſteill, that is to ſay xxiiij. gadis, at the furth-paſſing, ane halfpeny: And for ilk ſcheiff of irne, that is to ſay, xvi. gadis, at the furth-paſſing, 1 peny. And of ilk uther man that bringis irne within the realme, for the cuntrie, in ane tun, of ilk hundreth irne, iiij. *d.* and quhen it is ſauld, the towme tun pertenis to the King. *Item*, For ane kiſt or ſchryne with walx in it, ij. penies; and for 1 kiſt or ſchryne without walx, 1 peny. *Leg. burg. c.* 138.

C. XVII. Of ane fiſcheris ſchip.

GIF ony fiſcheris ſchip chairgit with hering, or uther fiſche, cumand within the havin, and ſelland to the valour of xij penies, ſcho ſall give for hir ſait in the havin, iv. *d.* and gif ſcho ſell not to the ſaid valour, ſcho ſall give nathing: And gif a little bottomit ſchip cumis with ony gudis, ſcho ſall give ij. penies; and gif ane boit cumis, ſcho ſall give ij *d. Ibid. Vid. in lib. commiſſ. fol.* 171.

C. VXIII. Of carriage of woll and hydis.

THAIR ſould be gevin for the carriage of ane laſt of woll, xviij. *d.*; and for a laſt of hydis, in name of carriage, xij. *d.*; for ane laſt of crouſe, 1 peny. *Lib. commiſſ. fol.* 171.

C. XIX. The haill cuſtumis, conforme to the auld law of *Reg. Majeſt.*

INPRIMIS, For ane wain of four oxin, 1 peny. For ane wain of four horſis, ij. penies. For ane turſell behind ane ſaidill, 1 *ob.* For ane turſell in ane ſaidill, 1 peny. For ane turſell befoir a man, iiij. *d.* For ane fardell, ane halfpeny. *Item*, For a tymmer of ſkynnis of toddis, quhitterittis, mertrikis, cattis, ſable, firrettis, or ſic uther beaſtis, for ilk tymmer at the out-paſſing, iiij. *d.* For ane hundreth lamb ſkinnis, ij. penies. For a tymmer of ſkarale, ij. *d.* For ane hundreth gragries and ſkarale, dicht and lade, viij. *d.* For ilk otter ſkin, ane halfpeny. *Item*, For ilk chalder of ſalt, corn or meill, 1 *d.* For half ane chalder, ane halfpeny. For ane quarter and boll, at the outganging, 1 farding; and gif it exceids not ane boll, nathing ſall be payit thairfoir: And ſiclike of beanis and peis. For ane ſowme of leikis on ane hors, ane halfpeny. For ane burding on a manis bak of bread or leikis, 1 farding: And gif he bearis thame not upon his bak, he ſall pay nathing. For ane burding of butter or cheeſe on the hors, at the out paſſage, ane halfpeny. *Item*, For ane burding of muſtard, ane farding. *Item*, For ane ox, ane halfpeny: And als mekle for ane bocht kow. For ane hors bocht and not riddin, gangand out of the town without a ſadill, ane halfpeny. For ilk hors or kow gangand quhair cuſtume ſould be gevin, ane halfpeny. For ten ſcheip, gait or ſwine, 1 *d.* For four or five of thame, ane farding: And gif thir beaſtis pertenis to ony frehalder dwelland furth of the burgh, to mak ſervice to his awin houſe, thay ſall give nathing; bot gif he will ſell thame, thay ſall pay cuſtume as ſaid is. *Item*, For ane ox hyde, 1 *ob.* For and laſt of hydis, viij. *d.* and for ane half laſt, iiij. *d.* ane quarter laſt, iiij. *d.* ane daker 1 *d.* for ane half daker, or for thré or four hydis, ane halfpeny; for ane or twa hydis that is barkit, at the out-paſſing, ane halfpeny. For ane laſt of hart hydis, viij. *d.* For ane daker of calf hydis, ane peny farding. For ane pak of woll, ij. *d.* For vi. vij. or viij. ſtane of woll, 1 *d.* *Item*, For ane laſt of woll, that is for twa ſeckis gatherit togidder, viij. *d.* For ane ſeck of woll, iiij. *d.* For twa, thré, or four ſtane of woll, ane halfpeny. For ane ſtane of littit woll, ane halfpeny. *Item*, For ane hundreth wollit ſkinnis

nis, iv. *d.* For threſcoir wollit ſkinnis, ij. *d.* For ane bundle of ſkinnis or ſchoirlingis, *viz.* xxiv. 1 *d.* For als mony wollit ſkinnis, ij. *d.* For ane hundreth hog ſkinnis, ij. *d.* For ane hundreth lamb ſkinnis, 1 *d.* For ane hundreth ſchiveronis, iiij. *d.* For ane doſſone cordwane ſkinnis, at the entring, nathing; but at the furth-paſſing, iiij. *d.* For thré or four ſkinnis, 1 *d.* For twa ſic ſkinnis, 1 *ob.* For ane ſkin, nathing. *Item*, For ane hundreth ſalmond, at the entring, nathing; bot at the furth-paſſing, iiij. *d.* For ilk hundreth fiſch, as keyling, ling, ſtok fiſh, haddok, at the entring, nathing; bot at the out-paſſing, iiij. *d.* For ane horſe ſowme of the ſaid fiſh, or dry hering, at the furth-paſſing, 1 *ob.* For ilk thowſand haddokis, quhytingis, oiſteris, codlingis, or ſic maner of fiſh brocht to ſell, for the ſtallage, 1 *d.* For ane burding of fiſh on ane manis bak, at the furth-paſſing, 1 *ob.*. For ane thowſand hering caryit on a hors, 1 *d.* For ilk burding of hering, for the ſtallage of the merkat, 1 *d.* For nyne, aucht, or ſeven hundreth hering, 1 *d.* For ſax, fyve, four, thré, twa, or ane hundreth hering, ane farding. For ane laſt of hering, iiij. *d.* For ane half laſt of hering, ij. *d.* gif thay be caryit be the buyer that buys thame; bot gif thay be caryit fra the havin be the fiſcher, he ſall pay nathing thairfoir, bot allanerlie for his ſait. *Item*, For braſill, at the entring, nathing; bot at the out-paſſing, for the hundreth, ij. *d.* Walx, at the entring, nathing, bot at the out-paſſing, gif it be weyit be haill wawis, viiij. *d.* ilk waw; bot gif it be weyit be ſtanes, for ilk ſtane, 1 *d.* *Item*, For ane baill of pepper, cumyng, allum, zinziber, curranis, almondis, feggis, raiſingis, or uther ſic thingis, at the entring thairof, nathing; bot for ilk baill, at the furth-paſſing, iiij. *d.* For ilk hundreth pund of pepper, or of uther ſic thingis foirſaidis, ij. *d.* For ane pock of allum, at the furth-paſſing, ij. *d.* For ilk hundreth pund wecht thairof, at the furth-paſſing, ij. *d.* For ilk hundreth pund that is ſauld, ij. *d.* For ane hundreth irne, ij. *d.* For ane ſowme of irne on ane manis bak, 1 *d.* For ane char of leid, that is to ſay, xxiiij. *ſotinellis*, iiij. *d.* For ane waw of cheis or oyle, 1 *d.* For ane hundreth canbus, 1 *d.* For ane hundreth carkes of kelles, at the entrie ij. *d.* at the furth-paſſing, ij. *d.* For ane hundreth pund of threid, 1 *ob.* For ane hundreth pund of linning threid, iij. *ob.* For ane hundreth bordis, iv. penies. For ane hundreth knives, 1 *ob.* For twa doſſone of braſin pottis, at the furth-paſſing, iij. *d.* and at the entring thairof, nathing. For twa doſſone of pannis, at the furth-paſſing thairof, ij. *d.* and at the entring, nathing. For twa doſſone of caldronis, iij. *d.* For thré caldronis, 1 *d.* For twa caldronis, 1 *ob.* For twa doſſone of lockis, 1 *ob.* For ane ſowme of pottis on a hors, 1 *ob.* For a burding of pottis on ane manis bak, ane farding. For ane ſowme of wad or mader on a hors, 1 *d.* For a burding of mader or wad to ſell, 1 *ob.* For ane peice of claith ſauld in the merkat, na cuſtume, except the claith be cuttit and ſauld be elnes, and then the ſellar ſall give to the Serjand of the burgh, 1 *ob.* *Lib. Commiſſ. pag.* 70. *&* *Leg. burg. c.* 137. *ubi quædam reperies quæ ſupra non habentur.*

Inprimis, The hundreth ſalt browage, contenand nine ſcore bollis, *Scottis* watter met, is reknit to be worth in fraught twentie tunnis Aleron. *Item*, Ten thouſand reid hering makis the laſt. *Item*,

Sax

Sax ſcore endis of *Spanzie* irne is ane laſt. *Item*, Twa thouſand pund of irne makis the tun. *Item*, Ane thouſand lubyes ſtok fiſh is ane laſt. *Item*, Twentie four hering barrellis full of corn is ane laſt, and auchtene bollis in *Danskene*. The *Spruce* ſtane is xxvij. pund *Scottis*. *Item*, Twentie four bundellis of bow-ſtingis, ilk bundell contenand xvi. ſtingis, is the laſt. *Item*, Threſcore of *Spruce* ſtanes of lint, or uther ſic geir ſauld be wecht, is ane laſt. *Item*, The great hundreth knapple, contenand xxiiij. ſmall hundrethis, is twa laſt. *Item*, Ane hundreth waneſcot, contenand ſax ſcore, is twa laſt. *Item*, Twentie leadis of hering, ilk ane of thame contenand fyve hundreth, is ane laſt. *Item*, Aucht leſhpund makis ane hundreth pund. *Item*, Twentie markis makis ane leſhpund. *Item*, Twentie leſhpundis is a ſchip-pund. ***** *Item*, Twentie half pokkis wad is ane tun. *Item*, Out of *Rea*, *Ravill*, *&c.* ſax ſchip-pundis makis the laſt. *Item*, The ſchip-pund in *Danskene* contenis of thair wecht xxxiiij. pund, quhilk will be xxvi. pund and ane half of *Scottis* wecht. *Item*, Ane thouſand braſill makis the tun. *Item*, Sax hundreth ſtravald is ane tun. *Item*, Aucht doſſone midling pottis makis a tun, that is to ſay, the greateſt contenand vi. pyntis. *Item*, Four doſſone of the greateſt ſort of irne pottis, the leaſt thairof contenand vi. pyntis, is ane tun. *Item*, Thré doſſone of the greateſt ſort of all is a tun. *Item*, Four cradill of the greateſt ſort of glaſs, and five of the mekle bind, is ane tun. *Item*, Sax hundreth ſmall takill cordage, or cables, or ſiclike, is ane tun. *Item*, Of louſe hemp onwrought, viij. *** is the tun. *Item*, Twentie four peices of rozet is a tun. *Item*, Forty aucht peices of feggis is ane tun. *Item*, Twentie four tappis of raiſingis is a tun. *Item*, Fifteen hundreth tallon out of barrellis, in veſſelis that fittis the ſelf, is ane tun; and of wadis, twelf hundreth pund in maner foirſaid. *Ex lib. Kyntor.*

Of meſouris and wechtis.

C. I. All burgeſſis may have meſouris and wechtis.

ALL burgeſſis may have in thair houſis meſouris to meſure thair cornis, and eln, ſtane and wecht, to met, meaſure and wey thair gudis and geir; and all meaſures and wechtis ſould be ſeilit and markit with the commoun mark or ſeill of the burgh: And quha beis fundin havand fals wechtis or meſouris, he ſall pay to the burgh ane unlaw of viij. *s.* *Leg. burg. c.* 51.

C. II. Of divers meſouris.

IMPRIMIS, Ane inche ſould be met with the thumb of a midling man, not over mekle nor over little, bot betwix the twa, and ſould be meſurit at the ruit of the naill of the thumb; or ellis the inch ſould contene the lenth of thré bear cornis without the tailis, ilk ane ſet at utheris endis, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. *Item*, Ane eln ſould contene xxxvij. inches of a mekle, litle, or midling man, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. *Item*, The King, with conſent of the thré eſtatis of parliament, hes ordanit and deliverit that the eln ſall contene xxxvij. inches, as is contenit in the ſtatute of King *David* the firſt maid thairupon, *Ja.* I. *fol.* 12. *c.* 78. 11 *Mart.* 1426. *Item*, The boll ſall contene a ſexterne, *viz.* xxij. gallonis of aile; and it ſould have in deipnes xix. inches, and in wydenes abone, xxiiij. inches, by the thicknes of

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the trie; and in the roundnes and circumference abone lxxij. inches; and in the roundnes at the boddom lxxi. inches; and the thicknes of the trie quhairof it is maid ſould be of ane inche, *Leg. burg. c.* 136. *Iter. Camer. c.* 35. *& in lib. Commiſſ. fol.* 119. *Item*, The galloun (*Lagena*) ſould be ſax inches and ane half in deipnes, and in breid of the boddome viij. inches and a half, with the thiknes of the trie in baith the ſides, and in circumference abone, xxvij. inches and a half, and in circumference below, xxiij. inches, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. Or the gallon ſall contene xij. pund of water, *viz.* iiij. pund of ſea water, iij. pund of ſtank or loch water, and iiij. pund of cleir rynnand water. *Iter. Camer. c.* 34.

C. III. Ane univerſal meſour ſould be uſit throwout the realme.

ITEM, It is ordanit that thair be maid certane meſouris of boll, firlot, half firlot, peck and galloun, the quhilk ſall be generallie uſit throw all the realme in all partis; the quhilk ſall be gevin furth at *Edinburgh*, at the iſche of this parliament thidder continewit; and thay meſouris ſall be gevin to be uſit at the firſt day of the moneth of *September* nixt to cum, and fra thyne furth the King forbiddis ony uther meſouris to be uſit in the realme, under the pane that may follow. *Ja.* I. *fol.* 10. *act.* 63. 11 *Mart.* 1425.

C. IV. Of the diviſioun and quantitie of the boll, firlot, and water wechtis.

ITEM, Thay ordanit the boll to met victuall with to be devdit in four partis, *viz.* four firlottis to contene a boll, and that firlot not to be maid efter the firſt meſour, na efter the meſour now uſit, bot in middle meſour betwix the twa. *Item*, The boll ſall contene in breid xxix. inchis within the buirdis, and abone xxvij. inchis and ane half evin over-thort, and in deipnes xix. inchis. *Item*, The firlot ſall contene in breid evin over-thort xvi. inchis under and abone, within the buirdis, the thiknes of baith the buirdis ſall contene ane inch and ane half, and in deipnes it ſall contene ix. inches; the half firlot and the peck thairefter followand as effeiris. The firlot ſall contene twa gallounis and a pynt; and ilk pynt ſall contene be wecht of cleir water of *Tay* xli. unces, that is to ſay, ij. pund and ix. unces trois: Swa weyis the galloun xx. pund and viij. unces; ſwa weyis the firlot xli. pundis; and the boll, contenand four firlottis, weyis vilj. ſcoir iv. pundis. The auld boll, firſt maid be King *David*, contenit a ſexterne; a ſexterne contenit xij. gallounis of the auld met; and ilk gallon weyit x. pund Trois and iiij. unces of divers wateris; ſwa weyit the boll ſax ſcoir thré pundis; ſwa weyis this boll new maid, mair then the auld boll, xli. pund, quhilk makis twa gallounis and a half, and a choppin of the auld met, and of the new met ordanit, ix. pyntis and iij. muchkinnis. *Ja.* I. *fol.* 12. *act.* 80. 11 *Mart.* 1426.

C. V. Ane univerſall meſour to be maid, and a ſtandart.

ITEM, Anent mettis and meſouris, it is ſene ſpeidfull, that ſen we have bot a King and a law univerſall throwout the realme, we ſould have bot a met and meſour generall to ſerve all the realme, that is to ſay, ane pynt, a quart, quhilk was gevin be the ordinance of the thré eſtatis, Sir *Johne Forſtar* that tyme beand Chalmerlane into the burgh of *Striviling*, as for the ſtandart, thay to remane univerſallie throwout the realme; and the firlot ſall be maid thairefter, that is to ſay, ilk firlot ſall contene xviij. pyntis of the ſamin

meſour round, and in lyke wyde under and abone, the twa buirdis contenand evin over in thicknes ane inche and ane half; and the breid ovir within the buirdis, xvi. inche and a half; and the half firlot and peck to follow in the ſamin kynde. And of thir ſaid meſouris, that is to ſay, pynt, quart and firlot, ſall be maid new thré ſtandartis, ane to be ſend till *Abirdene*, ane uther to *Perth*, and the thrid till *Edinburgh*, to remane, and now to be proclamit thair, fra the feiſt of *St. Michael* nixt to cum, that thay meſouris, pynt, quart, and firlot, have cours, and nane utheris; ſwa that in the mein tyme all maner of perſounis that thinkis till uſe the ſaid meſouris, may get thame, beand brint and ſeillit with the ſeills of thay ſteidis, as thay will uſe, and be ſervit thairefter. And gif ony perſounis, efter the ſaid termis, uſis uther meſouris than thir, and thair may be taint gottin thairof, be the dittay or utherwayis, thay ſall pay the unlaw of the chalmerlane air doubill. And gif ony man be foundit of auld or of new fermis, of uther meſouris than ar abone writtin, thair foundatioun ſall ſtand in effect, and the meſour of thair foundatioun ſall be proportionit to this meſour that now is, ſwa that the ſamin quantitie ſall remane with the giver and the reſſaver, but prejudice of ony of thame. *Ja.* II. *fol.* 42. *act.* 82. 6 *Mart.* 1457. *Ja.* IV. *fol.* 93. *act.* 55. 18 *Maij*, 1491.

C. VI. Of water mettis.

ITEM, It is ordanit, that the water mettis that now ar, ſall remane and be uſit throw the realme in tyme to cum: And in ilk place and town, quhair the gudis ar ſauld and met be the water, thair be ordanit be the Alderman and the Baillies a leill man ſworne, to met all gudis ſellabill be the water met, als weill collis as uther gudis; and that the ſellaris, or nane in thair behalf, intromet thame in the metting of ſic gudis. *Ja.* I. *fol.* 10. *act.* 65. 11 *Mart.* 1425.

C. VII. Of divers kynd of wechtis. *Sterlingus. Unica. Libra.*

IMPRIMIS, The ſterling weyit in King *David* I. his tyme xxxij. granis of gude and round quheate, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. *Item*, The unce contenit in King *Davidis* tyme, xx. gude and ſufficient ſterling penies; and in King *Robert* the *Bruce*'s tyme, xxi. penies; and in King *Robert* the thirdis tyme, xxxij. penies, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. *Item*, The pund in King *Davidis* dayis weyit xxv. ſchillingis, and ſould wey xv. uncis. In King *Robert* the *Bruce*'s dayis the pund of ſilver weyit xxvi. ſchillingis, and iiij. ſterling penies, *Leg. burg. c.* 136. *Iter. Camer. c.* 34. *Item*, The ſtane, for weying of woll and uther geir, did wey xv. pund, but now xvi. pund, *Leg. burg. c.* 136. *Iter. Camer. c.* 34.

C. VIII. Of wechtis.

ITEM, It is ordanit, that thair be maid a ſtane for gudis ſauld and bocht be wechtis, the quhilk ſall wey xv. leill Trois pundis; and that ſtane to be devidit in xvi. leill *Scottis* pundis: and of it thair ſall be ordanit half a ſtane, a quarter, a half quarter, a pund, half a pund, and uther les wechtis according thairto, with the quhilk all buyaris and ſellaris of gudis within the realme ſall buy and ſell with, and with nane uther wechtis, fra *Whitſounday* nixt to cum: And fra thyne furth thir foirſaid wechtis ſall have courſe. *Ja.* I. *fol.* 10.

fol. 10. *act.* 64. 11 *Mart.* 1425. *Ja.* I. *fol.* 12. *act.* 79. 11 *Mart.* 1426.

C. IX. All burrowis ſould uſe ane equal and like wecht.

ITEM, It is ſtatute and ordanit, that na burgh have ane wecht to buy with, and ane uther to ſell with, different in wecht thairfra; bot that all burrowis have ane univerſall wecht of the ſtane, baith for buying and ſelling of all ſtuff in tyme to cum. *Ja.* V. *fol.* 139. *act.* 95. 14 *Mart.* 1540. *Mar. R. fol.* 164. *act.* 20. 20 *Junij*, 1555.

C. X. That all meſouris and wechtis be of ane quantitie.

ITEM, It is ſtatute and ordanit, that all meſouris and wechtis, baith pynt, quart, firlot, peck, elnwand, ſtane and pund, be of ane quantitie and meſour, quhilk ſall be ordanit in *Edinburgh* be our ſoverane Lord, and his Chalmerlane and counſall; and that everie burgh cum and fetch thair meſour furth of *Edinburgh*, ſeillit and maid, and keip the ſamin: And quhair thair is ony fermis aucht in heritage of the auld met, that the ſaidis fermis be proportionat to the quantitie of the auld met, and payit with the new met, to the availl of the auld met proportionallie. And gif ony perſounis uſe ony uther meſouris or wechtis in tyme to cum, bot the meſouris and wechtis now to be maid, as ſaid is, it ſall be ane punct of dittay, and thay to be indictit thairof fra thine furth. *Ja.* IV. *fol.* 109. *act.* 131. 11 *Mart.* 1503.

C. XI Anent all meſouris and wechtis.

ITEM, Forſamekle as in our ſoverane Ladyis maiſt nobill predeceſſouris King *James* the fyſt and feird tymes *reſpective*, it was ſtatute and ordanit, that all meſouris, as pynt, quart, firlot, peck, elnwand, ſtane and pund, to be of ane quantitie and meſour; and that na burgh have ane wecht to buy with, and ane uther to ſell with, different in wecht thairfra, bot that all wechtis, meſouris, and mettis for buying and ſelling, to be univerſall, baith to burgh and to land, in all tymes thairefter; quhilkis actis hes not bene as zit put to dewe execution: Thairfoir it was ſtatute and ordanit, in the parliament haldin at *Edinburgh* the xxvi. day of *Junij*, 1555, that thir perſounis underwrittin, or ony thré of thame, that is to ſay, reverend fathers in God, *Williame* Biſchop of *Dumblane*, umquhile *Robert* Biſchop of *Orknay*, Mr. *Abrahame Creichtoun* Proveſt of *Dunglas*, umquhile Sir *Williame Hamiltoun* of *Sanquhar* Knicht, Mr. *Thomas Marjoribankis* of *Ratho*, Sir *Richard Maitland* of *Lethingtoun* Knicht, and *Thomas Meinzeis* Proveſt of *Abirdene*, ſould have convenit in the burgh of *Edinburgh*, and thair to have cauſit the elnwand, the quart, pynt, firlot, ſtane and pund, be brocht to thame fra the townis of *Striviling*, *Linlithgow*, *Lanark*, and be the ſamin, as thay ſtand, to have maid ane univerſall wecht of the ſtane and pund, ane univerſall meſour of the pynt, quart, firlot and elnwand, conforme to the act maid be the ſaid King *James* the feird thairupon, except the water met to remane according to the uſe of the cuntrie; to have bene directit furth to the haill liegis of this realme, with the quhilkis thay ſould have bene haldin to buy, ſell, met, meaſour, wey, reſſave and deliver, and be na uther meſour and wecht: And quha did in the contrare heirof ſould have bene puniſt for falſet, conforme to the law: And this ordour to have bene maid be the perſounis foirſaidis, or ony thré of thame, betwixt the dait of the

ſaid

ſaid act and *Alhallowmes* nixt thairefter, but ony further delay. And becaus it is underſtandin be the Quenis Grace, and thré eſtatis in this preſent parliament, that the ſaid act tuk nane effect, nor the foirſaidis perſounis contenit thairin performit not the contentis of the ſaid act, ſwa that the ſamin micht have takin full effect: And thairfoir hir Hienes, with the aviſe of the thré eſtatis foirſaidis, ſtatutis and ordanis zit as of befoir, that all meſouris, pynt, quart, firlot, peck, elnwand, ſtane and pund, be of ane quantitie and meſour; and that na burgh have ane wecht to buy with, and ane uther to ſell with, different in wecht thairfra; bot all wechtis, meſouris and mettis for buying and ſelling be univerſall, baith to burgh and land, in all tymes heirefter, equallie the ane with the uther: And to the effect that this preſent act, and actis foirſaidis maid heirupon of befoir, may be put to forther executioun, that thir perſounis under-writtin, that is to ſay, ane reverend father in God *Williame* Biſchop of *Dumblane*, Mr. *Abrahame Creichtoun* Proveſt of *Dunglas*, Schir *Richard Maitland* of *Lethingtoun* Knicht, Mr. *James Macgill* of *Rankelour-nether*, Clerk of regiſter, Schir *Johne Bellendene* of *Auchnoull* Knicht, *Thomas Meinzeis* of *Petſoddellis*, Proveſt of *Abirdene*, convene in the burgh of *Edinburgh*, and cauſe the elnwand, the quart, pynt, firlot, ſtane and pund, to be brocht to thame fra the townis foirſaidis, and be the ſamin, as thay find, to mak ane univerſall wecht of the ſtane of the wecht of xvi. pundis Trois wecht allanerlie; the pund and uther ſmaller wechtis equivalent thairto. And ficlike, ane univerſall meſour and met of the quart, pynt, firlot and elnwand, conforme to the wechtis and meſouris uſit in the ſaidis townis *reſpective*, according to the ſtandis thairof; except the water met to remane as of befoir. And as the foirſaidis perſounis, or ony thré of thame, directis furth the foirſaidis mettis, meſours and wechtis, that the haill liegis of this realme ſall be haldin to buy, ſell, met, meſour, wey, reſſave, and deliver, and be na uther wecht, meſour, nor met. And as thay find that thay mak ane met, meſour and wecht of the foirſaid ſtane, firlot, quart, pynt, and pund, and utheris ſmaller meſouris effeirand thairto, of braſs, to remane in the regiſter, that everie heid burgh of this realme have the juſt meſour and quantitie of the ſamin in ſemblabill metal, to be uſit univerſallie in this realme, quha ſall be haldin to give and deliver the juſt meſour and quantitie thairof in maner abone writtin, to everie ſchire nixt adjacent to thame, to be uſit in maner befoir reheirſit, univerſallie, and na utherwayis. And this ordour to be maid be the perſounis foirſaidis, or ony thré of thame, betwix this and the firſt day of *October* nixt to cum; and efter the ſaid day, to mak publicatioun and intimatioun to all and ſindrie our ſoverane Ladyis liegis, of quhatſumever degré, eſtate or conditioun thay be of, that cummis in the contrare heirof, thay ſall be puniſt as committaris of thift, to the deid. *Ma. R. fol.* 164. *act.* 20. 20 *Junij*, 1555. *& fol.* 175. *act.* 13. 4 *Junij*, 1563.

C. XII. That all wollin claith be met be the rig.

ITEM, To eſchew diſſait and ſkaith of our ſoverane Lordis liegis, daylie, and at all tymes ſuſtenit throw the metting of wollin claith be the ſelvage, it is thocht expedient that in tyme cuming all wollin claith be met be the rig, and not be the ſelvage. *Ja.* III. *fol.* 52. *act.* 39. 20 *Novemb.* 1469.

Ma-

Materis concerning the husband and the wife.

C. I. Ane husband may be procurator for his wife in judgment.

ANE husband and maryit man may anſwer for his wife in judgment, and do for hir that he is decernit to do, in all courtis, als well within burgh as without the ſamin, and in all actiounis concerning wrang and unlaw, *Leg. burg. c.* 33. *Item*, Gif a manis wife do ony injurie to hir nichtbour, and thairfoir findis ſovertie, and raſhlie, without conſent of hir husband, makis anſwer in judgment, and is convict thairanent be dome of court, hir husband is not obligit to mak payment for the amerciament decernit aganis hir, nor zit of the clame nor petitioun of the partie, bot according to his awin pleſour and will; bot the husband in this cais may correct hir as ane bairn within age, be reſſoun of hir ignorance, and doing without his counſall or aviſe. *Leg. Foreſt. c.* 51. *de judic. c.* 40.

C. II. The wife may not perſew, nor be perſewit, without hir husband.

ANE woman beand cled with ane husband may not be callit nor perſewit in judgment, in ony civil actioun or cauſe, except hir husband in likewayis be callit and perſewit to fortifie, aſſiſt and authorize hir, 8 *Feb.* 1543. *Item*, In like maner ſcho may not perſew in ony actioun or cauſe without hir husbandis conſent, 20 *Feb.* 1549. 9 *Decemb.* 1550, 1 *t. c.* 1087. Gif divers and ſindrie perſounis perſew conjunctlie ony ſummondis or cauſe, and ane of thame be a woman cled with ane husband, and the ſummondis be not intentit and perſewit at his inſtance, for his interes, ſcho may not perſew the ſamin without aviſe of hir husband; and hir colleguis may not perſew without hir, becaus the ſummondis is perſewit at all thair inſtances. 27 *July*, —

C. III. The powar of the wife anent hir husbandis gudis and geir.

NA woman cled with ane husband may or ſould, without his licence, be borgh or cautioun, nor zit give, ſell or diſpone ony of hir husbandis geir, nor zit perſew or defend ony actioun, querrell, or cauſe in judgment, except almons gevin meſourablie, and all hir claithis, and abulzeamentis of hir bodie, togidder with all giftis, gudis, geir or jewellis gevin unto hir, (*dona parapherna*) the quhilk ſould be gevin with aviſe and licence of hir husband; utherwayis, gif ſcho dois in the contrare of the premiſſis, hir diſpoſitioun is of nane availl, and may be agane callit. Nevertheles ane widow may be ſovertie for ony perſoun, or for ony gudis or geir; and ſcho may frelie diſpone hir gudis and geir at hir pleſour, conforme to law and equitie, without licence or impediment of ony perſoun. *Lib.* IV. *c.* 40. *Quon. attach. c.* 33.

Widows.

C. IV. The husband may annalzie the wife's movabillis, without hir conſent.

THE husband may annalzie his wife's moveabill gudis without hir conſent, and diſpon thairupon at his pleſour; and ſcho at na time befoir or efter his deceis may ſeik reſtitutioun, or call for retractioun of the ſaid diſpoſitioun. 29 *April.* 1554.

C. V. Ane husband may mak his wife aſſignay.

ANE husband may mak and conſtitute his lauchful wife his ceſſioner and aſſignay, in and to ony ſowmes of money or uther debt

auchtand to him; and efter his deceis, ſcho, as aſſignay, may call and perſew the debtour thairfoir. 3 *Juvij*, 1496. *Iſobell Lauder* contra *Johne Myretoun*, 1 *t. c.* 92.

C. VI. Aſſignatioun maid in defraud, of na force.

ALL aſſignatiounis of ony landis, gudis, geir, tak or aſſedatioun maid be the husband to the wife, is of nane availl, force nor effect, as maid in defraud of the law, gif the husband, maker thairof, bruik the ſamin, and remane in poſſeſſioun of that quhilk is contenit thairintill for his lifetime, be his awin richt, unto his deceis. *Ult. Feb.* 1508. *Robert Callendar* contra *Elizabeth Levingſtoun*, 1 *t. c.* 273.

C. VII. The husband may revoke the infeftment gevin be him to his wife.

GIF the husband, efter the completing of marriage, gevis infeftment or liferent of ony of his landis to his wife, he may revoke the ſamin: And gif it happinis him, efter the revocatioun, to commit adulterie, and be divorcit for the ſamin fra his wife, the ſamin landis ſould not pertene to his wife, becaus the infeftment thairof gevin to hir was revokit be hir husband befoir the adulterie committit be him. 9 *Jan.* 1576. *Chriſtiane Levingſtoun* contra *Henrie Murray*, 2 *t. c.* 381.

C. VIII. A diſcharge maid be the wife in preſence of hir husband, null.

GIF ony manis wife makis ony renunciatioun or diſcharge in preſence of hir husband, of ony terce or conjunct fee, or ony uther richt or title pertening to hir, the ſamin, albeit it be done with hir husbandis conſent, is not ſufficient of the law; and thairfoir ſcho, efter hir husbandis deceis, may be reſtorit *in integrum* to the ſamin eſtait quhairin ſcho was befoir the makingof the ſamin. 23 *Junij*, 1517. *Janet Maxwell* contra *the Abbot of* Paſlay, 1 *t. c.* 380.

C. IX. Obligatioun maid be the wife throw feare of hir husband, is of nane avail.

ANE contract or obligatioun beand maid, quhairin the husband and the wife is bundin and obliſt for ony cauſe to ony perſoun, gif he to quhome the ſaid obligatioun is maid, call and perſew the husband and the wife, for fulfilling thairof, and to hear and ſé the ſamin regiſtrat, and to have executioun; the wife may compeir and alledge that ſcho was compellit be hir husband to mak the ſamin contract, and ſwa conſentit thairto throw juſt fear and dredour that micht fall on ane conſtant woman. 6 *Maij*, 1552, *Patrick Johnſtoun* contra *Williame Stewart*, and *Iſobell Bar* his ſpouſe, 1 *t. c.* 192.

C. X. After the husbandis deceis, the wife may not be perſewit for ony ſpulzie committit be him.

THE wife may not be callit nor perſewit, as wife, efter hir husbandis deceis, for ſpulzie committit be hir husband, and be hir in his companie, alledgand hir to have aſſiſtit him thairintill; becaus the husband is principall and heid over his wife. The ſame thairfoir is underſtand to be done be him principallie and allanerlie, and thairfoir his airis and executouris ſould be callit thairfoir, 9 *Novemb.* 1565, *Mr.* James Creychtoun *contra* Martine Creychtoun, 2 *t. c.* 309. And ſiclike, ane decrete of ſpulzie or ejectioun being obtenit aganis the husband and his wife, as wife, and conjunct perſoun with him, and being preſent with him the time of the committing of the ſpuilzie or ejectioun, ſould not reſſave executioun, nather in all nor in part, aganis the ſaid wife, or hir executouris, albeit ſcho in his lifetime, and lang befoir the committing of the ſaid ſpuilzie, was *præpoſita negotiis mariti*;

riti; bot the executioun of the ſaid decreit aucht and ſould cum haillelie upon hir ſaid husbandis lands, gudis and geir, becaus the husband ſould anſwer for all his wife's deidis *civiliter*. 29 *Mart.* 1561, Andro Wardlaw *contra the Laird of* Torreis aires, 1 *t.* *c.* 786.

C. XI. The husband ſould ſuſtene his wife.

THE husband may be compellit to ſuſtene his wife in meat, claithis, and uther neceſſaris effeirand to hir eſtait, and tocher reſſavit with hir. 7 *Mart.* 1561, *Dame* Jeane Hamiltoun *contra* Hew *Erle of* Eglingtoun, 1 *t.* *c.* 1282. *Item*, Gif ane man puttis away his wife out of his houſe and companie, for ony crime or fault alledgit committit be hir, he aucht and ſould ſuſtene hir conforme to hir eſtait, fra the day in the quhilk he put hir away, unto the day of the reconciliatioun, or then of the final ſentence of divorce. 26 *Mart.* 1561, Barbara Logane *contra* Roger Wod. 26 *Feb.* 1561, Agnes Creychtoun *contra Mr.* Alexander Abercrombie, 1 *t.* *c.* 783.

C. XII. The wife ſould have na part of the moveabillis, gif hir huſband deceis within zeir and day.

ANE man and ane woman being maryit togidder, gif it happinis the ſaid man to deceis within zeir and day efter the completing of the ſaid mariage, na bairnis beand gottin nor born betwix thame, the ſaid wife ſall have na part of hir ſaid husbandis moveabill gudis or geir, be reſſoun of the ſaid marriage, and as wife; bot the haill moveabillis aucht and ſould pertene to the diſpoſitioun of the deid his airis and executouris. 11 *Decemb.* 1506, Margaret Windizettis *contra* James Logane, 1 *t.* *c.* 262.

C. XIII. The wife, efter hir huſbandis deceis, ſould be entertenit be the wardatar of the air.

GIF ony man, havand ane lauchfull wife, and ane ſone gottin with hir, puttis his ſone in fie of all and haill his landis, without ony reſervatiouu of terce to his wife; and it happin thairefter that he and his ſone baith deceis, and thairthrow all and haill his landis fall in the ſuperiouris handis, be reſſoun of ward and non-entres, in ſic ſort that the ſaid wife have na part nor portioun thairof, be reſſoun of liferent, terce, conjunct-fie, or utherwayis; the Superiour, induring the time of the ward and non-entres, and thairefter the richteous air of the ſaidis landis, efter his entres thairto, may be compellit to give zeirlie to the ſaid wife, for hir ſuſtentatioun, ane reſſonabill dewtie of the maillis of the ſaidis landis, to leive upon, eſthe modificatioun and diſcretioun of the Judge, 21 *Julij.* 1534, Janet Logane *contra* Elizabeth Campbell *and* Williame Wallace, 1 *t.* *c.* 459.

C. XIV. The wife, beand ane heretrix, may not ſell hir heritage without hir husbandis conſent.

GIF ane heretrix, beand cled with ane husband, ſell or diſpone to ony perſoun hir richt, title or clame, that ſcho hes or may have to ony landis or heritage pertening, or that may juſtly pertene to hir be deceis of ony of hir predeceſſouris, or utherwayis, the ſamin diſpoſitioun is null and of nane availl, gif it be maid and done without expres conſent and aſſent of hir husband. *Penult. Feb.* 1505, Chriſtiane Stewart *contra* Williame Stewart *of* Roſſyth, 1 *t.* *c.* 235.

C. XV. In quhat cais the wife may be puniſt for

THE wife is not haldin to accuſe hir husband, or to reveil thift or ony felonie committit be him, for ſcho hes na powar of hirſelf, and

the husbandis treſpas, or the husband for the wife's treſpas.

and thairfoir hes far leſs powar of him, or over him, to do the ſamin: And like as the husband ſould not conſent to ony miſdeid done be his wife, in like maner ſcho ſould give na conſent to ony crime done be him, bot ſould ſtop and let him efter hir powar. The wife, in certane cauſis, is obliſt to anſwer for the miſdeid of hir husband; as gif ony thing thiftuouſlie ſtollin, or utherwayis wrangouſlie obtenit be him, happinis to be fund or apprehendit in ony place quhairof the keyis ar in hir keiping and cure, ſic as the ſpenſis or kiſt quhairin hir claithis or jewellis ar keipit, or of uther hir kiſtis or cofferis; for gif ony ſic thingis be within hir keyis of ſic places, ſcho ſall be als guiltie and culpabill thairof as hir huſband. And gif the wife happinis to do ony thift or treſpas, and the thing thiftuouſlie ſtollin, or utherwayis wrangouſlie obtenit, be fund in hir handis, poſſeſſioun or keyis, hir husband is not obliſt to anſwer thairfoir, except he expreſly conſent thairto, or promiſe to warrand hir thairanent quhen he ſall happin to be callit to that effect. And it is to wit, that he is underſtand and preſumit to have conſentit, and to conſent to the miſdeid of his wife, gif he, knawand the ſamin, diſaſſentis not expreſlie, and opponis him thairto: Bot quhair the husband is preſumit and haldin to be a faithfull man, and that divers times he reprovit and chaſtiſit his wife for hir treſpas, efter his powar, he ſall not be haldin to anſwer for ony thing committit be hir, bot at his awin pleſour and will. *Item*, Gif the wife be convict or confes, that in committing of ony crime or treſpas be hir husband ſcho gave red, counſall or help, he and ſcho baith may be accuſit and puniſt thairfoir, becaus the husband allanerlie may be guiltie and culpabill, and his wife innocent and honeſt; and contrarelie the wife allanerlie may be guiltie, and hir husband nevertheles may be gude and honeſt; and thairfoir, ſeing thay be baith togidder guiltie, or baith togidder innocent, or zit the ane guiltie, and the uther innocent, the wife ſould not be maid quyte and fré in all ſic cauſis; bot rather gif ſcho and hir husband be baith partneris in ane crime, thay ſould be baith participant of the pane: And ſuppois the wife ſould give obedience to hir husband, nevertheles ſcho ſould not obey him in committing of grievous crimes, or hainous treſpaſſis, bot rather gif ſcho dois the ſamin, ſcho ſould be puniſt thairfoir, according to hir demeritis. *Item*, As

Concubine. domeſtique ſervandis.

tuiching ony manis concubine, or domeſtique ſervandis, it is utherwayis, for that thay ar bound and obliſt to mak manifeſt and reveil his miſdeidis and treſpaſſis, and then to paſſe away from him and leave his ſervice, utherwayis thay, as guiltie and culpabill, may be callit and accuſit thairfoir. *Leg. Foreſt. c.* 54.

Of marriage.

C. I. Anent lauchfull mariage of the awin blude, in degreis not forbiddin be Godis word.

ITEM, Our ſoverane Lord, with aviſe and conſent of my Lord Regent, and thré eſtatis of this preſent parliament, hes ſtatute and ordanit, that the haly band of marriage maid be all eſtatis and ſortis of men and women, to be als lauchfull and als fré as the law of God hes permittit the ſamin to be done, without exceptioun of perſoun or perſounis: And hes declarit and declaris, that ſecundis

in

in degreis of conſanguinitie and affinitie, and all degreis outwith the ſamin, contenit in the word of the Eternall God, and that ar not repugnant to the ſaid word, micht, and may, lauchfullie marie at all tymes ſen the viij. day of *Marche*, zeir of God 1558 zeiris, notwithſtanding ony law, ſtatute and conſtitutioun maid in the contrare: And ratifyis and approvis all the ſaid marriages done ſen the ſaid day; and the bairnes gottin, or to be gottin in ſic mariages, to be als lauchfull, als weill toward thair ſucceſſioun to landis, heritageis, or ony uther liberteis, as ony bairnis gottin in mariage; and to be repute and eſtemit in all time to cum, lauchfullie gottin in lauchfull mariage, notwithſtanding ony lawis, ſtatutis, conſtitutiounis, or actis maid or to be maid in the contrare. *Ja.* VI. *fol.* 14. *act.* 16. 15 *Decemb.* 1567.

C. II. Anent thame that maryis twa wifis or husbandis.

ITEM, It is ſtatute and ordanit, that quhatſumever perſoun maryis twa wifis, or woman maryis twa ſindrie husbandis, levand togidder undivorcit lauchfullie, contrare the aith and promiſe maid at the ſolempnizatioun and contracting of the matrimonie, and ſwa ar of the law perjure and infame; thairfoir that the panis of perjuring be execute upon thame with all rigour; that is to ſay, confiſcatioun of all thair gudis moveabill, warding of thair perſounis for zeir and day, and langar, induring the Quenis will; and as infame perſounis, never habill to bruke office, honour, dignitie nor benefice in tyme to cum. *Mar. R. fol.* 154. *act.* 20. 1 *Feb.* 1551.

Panis of perjurie.

C. III. Of ane pane contenit in ane contract of mariage.

GIN ane contract of mariage be maid betwix twa parties, quhairby ather of thame is obliſt to utheris, to compleit the band of mariage betwix thame at ane certane day, under the pane of ane certane ſoume of money, to be payit be the partie failzeand to the Kingis Hienes, in name of ane pain; and als ane certane uther ſoume of money to be payit to the partie, as for the coſt, ſkaith, damnage and intereſt ſuſtenit be him throw the default of the uther partie failzeand; the ſamin contract is lauchfull and ſufficient of the law of this realme; and thairfoir the day contenit in the ſaid contract beand bypaſt, gif ather of the parties refuſis or delayis the completing of the ſaid mariage, he may be callit befoir the Judge ordinar, and chargit to ſolempnizat the ſaid matrimonie within ane certane day: And gif he failzeis to do the ſamin, he aucht and ſould be condampnit in the payment of the ſaid ſoume, in name of pain, to the Kingis Hienes, and als the foirſaid ſoume as *intereſſe conventum*, to the partie quha is willing and reddie to obey and fulfill the ſaid contract and appointment for his part. 9 *Mart.* 1507, *the Abbot of* Paſlay, *and* Williame Edmonſtoun *of* Duntreth, *contra the Laird of* Buchanan. 5 *Julij*, 1546, *the Laird of* Panmure *contra the Laird of* Carmylie, 1 *t. c.* 270. Attour, ane contract of marriage beand maid betwix twa parties, quhairin thay ar bund and obliſt to complete the band of mariage befoir ane certane day; and failzeand thairof, the partie failzeand to content and pay to the partie not failzeand ane certane ſoume, or to do ony uther gude deid in name of pain. Gif ather of the parties failzeis, and the day appointit for the completing of the ſaid mariage beand bypaſt, he aucht and ſould be decernit to pay the ſaid ſoume of money,

or to do the ſaid gude deid in name of pain, conforme to the ſaid contract. 5 *Julij*, 1546, *the Laird of* Carmylie *contra the Laird of* Panmure, 1 *t. c.* 690.

C. IV. The tocher gude ſould be reſtorit agane, gif the mariage failzeis in the manis default.

CONTRACT of mariage beand maid betwix twa perſounis, and the tocher gude, or ony part thairof, beand payit befoir the completing of the mariage; gif the ſamin takis na effect, and on na wayis beis completit in the manis default, all and haill that quhilk was gevin in name of tocher gude ſould be reſtorit and deliverit agane: And gif he quha payit the ſamin is deceiſſit, his executouris (and not his airis) hes juſt title and actioun for repetitioun thairof; becauſe the ſamin was debt the tyme of his deceis, quhilk conſiſtis in money allanerlie, *quale debitum venit connumerandum inter bona mobilia præciſè.* 7 *April.* 1538. 1 *t. c.* 498.

C. V. Anent thame that divertis fra utheris, beand joinit of befoir in lauchfull mariage.

IT is fundin and declarit be our ſoverane Lord, his Regentis Grace, and thré eſtatis, and haill bodie of this preſent parliament, that in all times bypaſt, ſen the trew and chriſtian religioun was publictlie preichit, avowit and eſtabliſht within this realme, namelie ſen the moneth of *Auguſt*, the zeir of God 1560 zeiris, it hes bene, and in all tymes cuming ſall be lauchfull, that quhatſumever perſoun or perſounis joinit in lauchfull matrimonie, husband or wife, divertis fra utheris companie, without ane reſſonabill cauſe alledgit or deducit befoir ane Judge, and remanis in thair malicious obſtinacie be the ſpace of four zeiris, and in the mene time refuſis all privie admonitiounis, the husband of the wife, or the wife of the husband, for dew adherence; that then the husband, or the wife, ſall call and perſew the obſtinat perſoun offendar, befoir the Judge ordinar, for adherence: And in cais na ſufficient cauſis be alledgit quhairfoir na adherence ſould be, bot that the ſentence proceidis aganis the offendar, refuſand to obey the ſamin, the husband, or the wife, ſall meane thameſelfis to the ordinar Judge, the ſuperiour Magiſtrate, *viz.* the Lordis of ſeſſioun, and ſall obtene letteris in the four formis, conforme to the ſentence of adherence. Quhilk charge beand contemnit, and thairfoir beand denuncit rebell, and put to the horne, then the husband, or the wife, to ſute the ſpirituall juriſdictioun and powar, and require the lauchfull Archbiſchop, Biſchop or Superintendent of the cuntrie, quhair the offendar remanis, to direct privie admonitiounis to the ſaid offendar, admoniſhing him, or hir, as befoir, for adherence: Quhilkis admonitiounis gif he or ſcho contemptuouſlie diſobeyis, that Archbiſchop, Biſchop or Superintendent to direct chargis to the miniſter of that parochin quhair the offendar remanis, or in cais thair be nane, or that the Miniſter will not execute the ſamin, to the Miniſter of the nixt adjacent kirk thairto, quha ſall proceid aganis the ſaid offendar, with publict admonitiounis; and gif thay be contemnit, to the ſentence of excommunicatioun: Quhilk anis beand pronuncit, the malicious and obſtinat defectioun of the partie offendar, to be ane ſufficient cauſe of divorce, and the ſaid partie offendar to tyne and loſe thair tocher, *et donationes propter nuptias. Ja.* VI. *fol.* 13. *act.* 1. 30 *April*, 1573.

C. VI. Compenſatioun of like

THE husband hes juſt actioun and cauſe to ſeik partiſing and di-

vorcement, gif his wife committis adulterie, be committing the uſe of hir bodie to ony uther man induring the time of the mariage: Bot the husband may not part with his wife, or ſeik to be divorcit fra hir, be reſſoun of adulterie committit be hir, gif he in likewayis hes gevin the uſe of his bodie to ony uther in adulterie, and efter the committing thairof, na wayis was reconcilit to his wife thairanent. 26 *Mart.* 1561, Barbara Logane *contra* Roger Wod, 1 *t. c.* 784.

treſpas hes place in divorcement for adulterie.

QUHEN ony man and his wife ar *ſimpliciter* partit and divorcit be the authoritie of the Judge ordinar, for adulterie or ony uther treſpas committit be the man, the haill tocher-gude, and all that was reſſavit be the man fra the woman, be virtue of the matrimonie contractit betwix thame, aucht to be reſtorit to the woman, with the proffeitis thairof, efter the geving of the ſentence of divorce betwix thame. 18 *Decemb.* 1540, Janet Auchinleck *contra* James Stewart, 1 *t. c.* 616.

C. VII. Divorcement beand maid for the huſbandis fault, the tocher to be reſtorit.

TWA perſounis being lauchfullie maryit, gif ather of thame committis adulterie, the uther may lauchfullie divert and paſs away fra him, or hir; and being thairefter callit to adhere to him, or hir, in hous, or cumpany, ſould not be compellit to do the ſamin, gif he, or ſcho, be way of exceptioun alledgis, and apprevis the committing of the ſaid adulterie; albeit the committar thairof be not conviſt befoir a Judge as ane adulterar, or adultereſs. 19 *Decemb.* 1560, Johne Chalmer *contra* Agnes Lumiſdene. 21 *Junij*, 1561, Jeane Lyell *contra* William Montgomrie, 1 *t. c.* 1239.

C. VIII. Adulterie is a lauchfull cauſe of divorcement.

Of tocher-gude.

TOCHER properlie is that quhilk is gevin with ane woman to a man, the quhilk utherwayis is callit, in our municipal law, Maritage. And it is leaſum to ony havand landis to give a part thairof in name of tocher, with his ſone, or his dochter, or with ony uther woman, albeit he have ane air or not, as we have ſaid in ane uther place tuiching the alienatioun of heritage. *Lib.* 2. *c.* 18. *De judic. c.* 113.

C. I. It is leaſum to give landis in name of tocher.

QUHEN the husband or wife, or thair airis, askis and clamis ony landis promiſit in name of maritage, thair ſould a difference and diſtinctioun be obſervit, quidder the ſamin be clamit fra the gever thairof, or his air, or fra ane ſtrangear; for gif the ſamin be askit fra the gever thairof, or his air, it is in the perſewaris will to perſew the actioun and cauſe befoir the ſpirituall Judge, or befoir the temporall: For efter the electioun and chooſing of the partie, the eccleſiaſticall Judge may cognoſce and give dome tuiching landis gevin in maritage, or promiſit, albeit the ſamin be temporall landis; for in this cais it is ſufficient, gif thay be clamit as promiſit in name of maritage, the quhilk he may do leaſumlie, be reſſoun of the mutuall faith and promiſe that ather of the parties makis to utheris the time of the contracting of the mariage. Bot gif the ſaidis landis

C. II. Quhair cauſis tuiching tocher ſould be decydit.

is be askit fra ane ſtrangear, the cauſe or actioun pertenis to the temporall Judge, and ſould be decydit be him, be the ſamin ordour of proceſſe quhilk is uſit tuiching temporall landis; bot the defendar may not be compellit to anſwer heiranent, without he quha ſould warrant to him the ſamin landis be callit in like maner, *Lib.* 2. *c.* 59.

C. III. The curteſie of *Scotland* tuiching landis reſſavit in mariage.

IT is to wit, quhair ony man hes gottin and reſſavit landis with his wife in maritage, and gettis with hir ony bairne or air, the quhilk may be provin be certane witneſſis to have bene hard greiting at ony time efter his birth, and it happin the wife to deceis, the husband ſall bruik and joiſe the ſaidis landis for all the dayis of his lifetime, albeit the bairne live, or deceis befoir or efter his mother: Bot gif the husband have na bairnis, nor air, with his ſaid wife, the landis, efter hir deceis, ſall frelie returne and pertene to him that gave the ſamin, or his airis: And gif the man deceis, and the woman live and marie ane uther man, that ſecund man ſall have the ſamin richt and curteſie as is abone expremit of the firſt huſband, albeit he have ane air or not, or ſuppois the air die or live, as ſaid is. *Lib.* 2. *c. cum itaque* 58. *De. judic. c.* 129.

C IV. This curteſie hes place within burgh.

GIF ony man reſſavis with his wife ony land or tenement, in name of mariage, and hes ony bairnis with hir, male or female, and thairefter ſcho happin to deceis, and efter hir death, the ſone or the dochter live or die, the man ſall bruik and joiſe that land and tenement all his lifetime, bot he may not ſell, annalzie, nor wodſet the ſamin ony maner of way. And albeit the bairn, he or ſcho, that is born, deceis that night togidder with the mother, zit the man ſall bruik and joiſe the ſamin landis, as ſaid is, gif he may prove be twa ſufficient witneſſis, men or women, his nichtbouris, that thay hard the bairn cry or greit: Bot gif he hes reſſavit ony landis in burgage or tenementis, ane or ma, with his wife, in name of maritage, and hes na bairn, child nor air, all the ſamin, efter the deceis of the wife, ſall incontinent return and pertene to hir narreſt and lanchfull airis. *Leg. burg. c. ſi aliquis*, 44.

C. V. This curteſie hes na place quhair thair is na ſucceſſioun.

ANE man maryand ane heretrix of landis, gif the ſaid heretrix deceis without iſhue or ſucceſſioun of hir bodie, at ony time born be hir, hir husband ſall not bruik nor joiſe ony landis or heritageis pertening to hir be the curteſie of *Scotland*, quhilk is onlie grantit to the perſounis that maryis a maidin quha is in fie of the land, and on na wayis ſall be extendit to ony uther perſounis; and ſwa the ſaid husband, takand nather ſaſine nor real poſſeſſioun of ony landis pertening to his wife, hes not ony maner of fie, nather richt, heritage, nor bas fie, bot onlie hes the uſufruct of his ſaid wife's proper landis for his lifetime. 16 *Octob.* 1478, *the King* contra Henrie Melvile *of* Carnbie, 1 *t. c.* 22.

C VI. Tocher-gude ſould be reſtorit, gif the woman deceis within zeir and day.

MARIAGE beand lauchfullie contractit betwix twa parteis, gif it happin the woman to deceis within zeir and day efter the completing of the ſaid mariage, all tocher-gude payit be hir, or in hir name, aucht and ſould be delyverit and reſtorit agane to him that payit the ſamin: And gif the ſamin, or ony part thairof, be unpayit

payit to hir or hir husband the time of hir deceis, the debtour thairof on na wayis may be compellit, be hir airis or executouris, to pay the ſamin, notwithſtanding of ony contract or obligatioun maid befoir thairanent. 4 *Julij*, 1517. 20 *Julij*, 1517, William Gyle *contra* Henrie Cant, 2 *t. c.* 382.

Of conjunct-fie.

C. I. Quhairfoir conjunct-fie is gevin be the man to the wife: And of donatiounis forbiddin betwix thame.

GIFTIS gevin be the husband to the wife in auld times wes callit *donatio ante nuptias*, bot now it may be callit *donatio propter nuptias*; becauſe the ſamin may be maid and gevin not onlie befoir the mariage, bot alſo efter the completing thairof. *Donatio propter nuptias* is inventit and brocht in uſe, to the end that thairby the wife may be helpit, and have recompenſatioun for hir tocher-gude; for the mariage being diſſolvit, the wife ſould be ſuſtenit and helpit with the ſaid donatioun, as aſſythment and ſatisfactioun grantit to hir for hir tocher, in ſic ſort as it ſall be furthcumand to hir, and na wayis may be annalzeit or diſponit fra hir be hir husband during the time of the mariage; and when the matrimonie is diſſolvit and louſit without ony fault of ather of thame, *ſicut dos ad mulierem, ſic et donatio propter nuptias redit ad virum. Item*, It is to wit, that albeit the ſaid donatioun be maid befoir the ſaid mariage, zit thair is ane difference heir to be notit; for gif it be maid befoir the completing of the mariage, it may exceid the quantitie of the tocher-gude; bot gif it be maid efter the completing of the ſamin, it may not be mair, nor exceid the quantitie of the tocher-gude. *Item*, All uther kind of donatiounis is forbiddin be the law to be uſit betwix the husband and the wife, except it be tocher or conjunct-fie; becauſe gif ather of thame deſyrit ony gift of the uther, and war refuſit thairof, the ſamin refuſal wer ane occaſioun to ſtop and quenche mutuall love betwix thame. *Item*, Suppois donatiounis and giftis maid betwix the husband and the wife induring the time of the mariage is not leaſum of the law, zit gif the ſamin, being maid, remanis firm and ſtabill induring the life of the maker thairof, efter his deceis it may not be retractit, becauſe it is ratifyit be his deceis. *L.* 2. *c.* 16.

C. II. The proffeitis of the conjunct-fie pertenis to the husband.

IT is ſtatute and ordanit, that gif conjunct-fie be gevin to ane woman, and ſcho put in poſſeſſioun thairof, that nevertheles ſcho ſall not tak up nor intromet with the fruitis and proffeitis thairof; for the ſamin, all and haill, pertenis to the husband, that he thairby may ſuſtene wife and his family; for utherwayis, gif the wife intromet with the proffeitis of hir conjunct-fie, to hir particular uſe and commoditie, and the husband tak up the fruitis of the tocher-gude gevin to him be his wife, it could not be ſaid that the husband reſſavit ony tocher for to ſuſtene the charge and burdin of the mariage; for albeit he tak it up, in this cais he wantis als gude, that is to ſay, the conjunct-fie intromettit with be his wife, as ſaid is. *Lib.* 2. *c.* 16.

C. III. Of the Quenis conjunct-fie.

IT is ſtatute and ordanit, that ſen the landis and lordſchippis that uſis

uſis to be gevin to the Quenis Grace in conjunct-fie, ar of the Kings is propertie, and gif the ſamin be miſrewlit and brocht to evill uſe in hir time, throw ſleuth, and default of gude ordour put thairto, it will not allanerlie turn to hir ſkaith, bot alſo to the hurt and ſkaith of our ſoverane Lord; thairfoir ordanis that all and ſindrie the landis pertening to hir Grace in conjunct-fie be ordourit in all thingis, in ſetting and raiſing the prices thairof to hir proffeit, and in-bringing of hir maillis, proffeitis and dewteis of the ſamin, be our ſoverane Lordis authoritie, his Comptrollar, and utheris his Officiaris; and compt to be takin thairof in the Kingis chekkar zeirlie; and that the Chalmerlanes and tenentis of hir ſaid landis be chargit thairto zeirlie be preceptis on hir expenſis, ſiclike as the reſt of our ſoverane Lordis propertie; ſwa that hir Grace may be redilie anſwerit of hir conjunct-fie and proffeitis thairof. 21 *Octob.* 1518, *qualiter reperitur in regiſtro poſt ult. Sept.* 1517. 1 *t. c.* 386.

C. IV. Cautioun ſould be fund be the wardataris and conjunct fearis, to the proprietaris and minoris.

It is ſtatute and ordanit, that quhair ony land or landis happinis to fall in waird to our ſoverane Lord, or ony uther Baron of this realme, ſpirituall or temporall, or landis gevin in conjunct infeftment, or liferent, als weill to burgh as to land; that the Schiref of the ſchire, or Baillies, ſall tak ſiclike ſovertie of the perſoun or perſounis that gettis or hes ſic wairdis, that thay ſall not waiſt nor deſtroy thair bigingis, orchardis, woddis, ſtankis, parkis, medowis, or dowcatis, but that thay hald thame in ſiclike kind as thay ar in the time that he gettis and reſſavis the ſamin, he takand his reſſonabill ſuſtentatioun, or uſing in neidful thingis, without deſtructioun or waiſting thairof. And ane reſſonabill living to be gevin to the ſuſtentatioun of the air, efter the quantitie of the heritage, gif the ſaid air hes na blanche ferme nor fewferme landis to ſuſtene him on, als weill of the waird landis that fallis in our ſoverane Lordis handis, as ony uther Baron ſpirituall or temporall. *Ja.* IV. *fol.* 91. *act.* 47. 18 *Maij*, 1491. *Item*, Becauſe it is unproffitabill and inutile to mak lawis and ſtatutis for policie to be had, without the ſamin be keipit; and becauſe ſic ordour and proviſioun as is deviſit for policie may failzie, be falling of landis in waird, or geving of the ſamin in conjunct-fie or liferent: Thairfoir the Kingis Grace, with aviſe of the thré eſtatis, ordanis the act maid thairupon be the maiſt excellent Prince King *James* the feird, his father, of maiſt nobill mynd, to be obſervit and keipit in all punctis, and ratifyis and apprevis the ſamin: And that all Schireffis, Stewartis, Baillies and uther Officiaris, baith in regalitie and rialtie, and ſiclike ſpirituall men within thair landis, and to burgh, put the ſamin to executioun in all punctis; that is to ſay, all Officiaris within the rialtie, and Lordis of regaliteis, under the pain of refounding to the heritors of ſic landis fallin in waird, at thair perfite age, of all damnage and ſkaith that thay ſall happin to ſuſtene throw thair negligence (thay being requirit thairto be the perſoun that is in waird or his friendis). And gif the wardatouris, Ladyis of conjunct-fie, or liferent of ſic landis, refuſis to find ſovertie, conform to the ſaid act (thay being requirit thairto be the Schiref, Baillie, Stewart, Proveſt or Alderman in burgh); that the ſaid Schiref and Officiaris, ilk man within his awin boundis, charge thame to find the ſaid ſovertie conform to the ſaid act, perſonallie, or be oppin proclamatioun at the heid

burgh

burgh of the ſchire quhair the ſaidis landis lyis, within xxj. dayis nixt efter thay be chargit thairto, under the pain of wanting of the proffeit of all ſic waird landis, conjunct-fie and liferentis, to be inbrocht to the Kingis uſe, ay and quhill the ſaid cautioun be ſufficientlie fundin: And that the Lordis auditouris of the chekkar, and theſaurar for the time, inquire diligentlie in everie chekkar at all Schireffis and uther Officiaris foirſaid, at the making of thair comptis, gif the ſaid cautioun be ſufficientlie fundin, and get certificatioun thairof. *Ja.* V. *fol.* 120. act 16. 7 *Junij*, 1535.

C. V. Anent the waird of tenandreis pertening to the conjunct fearis.

GIF an woman, or Lady, hes ony landis pertening to hir in conjunct-fie with the pertinentis, and tenandreis thairof, and ony pertinent or tenandrie fall in waird during hir lifetime, the waird thairof pertenis on na wayis to the Superiour of the ſaidis landis, bot unto the ſaid lady allanerlie: And gif ſcho diſpones the gift thairof, befoir hir deceis, to ony perſoun, the donatour thairof, be reſſoun of the ſaid gift and diſpoſitioun, ſall bruik and joiſe the ſaidis landis for all zeiris and termis that thay ſall happin to be in waird, notwithſtanding that the ſaid lady, maker of the ſaid gift, deceis befoir the end and iſchue of the ſaid waird. 18 *Decemb.* 1526, Stephane Dodingſtoun *contra* Patrick Dunbar, 1 *t. c.* 285.

C. VI. The conjunct fear ſould pay the annuell, aucht of the conjunct-fie landis.

ANE man beand infeft ſufficientlie in ane annuelrent, to be liftit and takin furth of ony landis pertening to ony uther man and his wife in conjunct-fie, and, be virtue of his infeftment, is in poſſeſſioun thairof; gif thairefter it happin the husband to deceis, leavand the ſaid wife conjunct fear on life behind him; gif ſcho intromettis with the ſaidis landis pertening to hir in conjunct-fie, and takis up the maillis and proffeitis thairof, ſcho aucht and ſould pay all and haill the ſaid annuell, for all and haill the zeiris of hir intromiſſioun, to him quha is infeft thairintill. 19 *Decemb.* 1527. Johne Grahame *contra* Chriſtiane Forſyth, 1 *t. c.* 338.

C. VII. Conjunct-fie landis redemit be the air, pertenis not to him, bot to the conjunct fear.

GIF ony landis pertening to an woman in conjunct-fie, be annalzeit or wodſet in hir husbandis lifetime under reverſioun, and efter his deceis his air happinis to redeme and outquyte the ſamin fra him to quhome thay war annalzeit, or fra ony uther; the ſamin pertenis not to him be reſſoun of redemptioun, bot aucht and ſould pertene to the conjunct fear be reſſoun of conjunct-fie, and that for hir lifetime, like as gif the ſamin had not bene annalzeit or wodſet. 2 *April*, 1530, Jonet Dumbar *contra* Gilbert Kennedie, 1 *t. c.* 302.

C. VIII. Of conjunct-fie landis redemit fra the conjunct fear.

LANDIS pertening to ony woman be reſſoun of conjunct-fie, or liferent under reverſioun, and the ſamin beand lauchfullie redemit fra hir, ſcho ſall have the uſe and proffeit of the ſilver ſpecifyit in the reverſioun for all the dayis of hir lifetime, ſcho findand cautioun and ſovertie that the ſilver, efter hir deceis, ſall be furthcumand to the air, or to ony uther perſoun havand ſpeciall interes thairunto. 25 *Feb.* 1534, 10 *Julij*, 1553, 1 *t. c.* 1182.

C. IX. Conjunct-fie landis may fall in waird.

LANDIS falling in waird be deceis of ony man that died laſt veſt and ſeaſit thairintill, the quhilk, all or in part, pertenis to his wife be reſſoun of conjunct-fie, the ſamin fallis and becumis in the Superiouris

riouris handis be reſſoun of waird; becauſe all landis haldin be ſervice of waird and releif of ony Superiour in chief, and pertenand to ony woman, or uther perſoun, in conjunct-fie, may cum and fall under waird, except the conjunct infeftment be ratifyit, apprevit and confirmit be the Superiour. 13 *Martij*, 1534, Malcome *Lord* Fleming *contra* Jonet Home, 1 *t. c.* 471.

C. X. The alienatioun of conjunct-fie landis.

THE husband may ſet in tak or aſſedatioun, or ſell, annalzie or put away his wife's conjunct-fie, or ony uther moveabill gudis pertening to hir, with hir conſent obtenit befoir ane Judge ordinar, ſcho makand faith thair, furth of hir husbandis preſence, not to cum in contrare of the ſamin; utherwayis, gif ſcho conſentis not to the alienatioun and diſpoſitioun thairof, albeit in his lifetime ſcho may not cum aganis ony thing done be hir husband, zit efter his deceis ſcho may call for reductioun thairof; and ſcho aucht and ſould bruik and joiſe the ſamin landis as hir conjunct-fie, and may call and perſew the poſſeſſouris thairof to remove thairfra, notwithſtanding ony richt or title maid to thame be hir ſaid husband befoir the time of his deceis. 20 *Januar.* 1505, Marjorie Lindeſay *contra* Williame Wallace, 1 *t. c.* 232.

C. XI. Anent revocatioun maid be ane woman haveand conjunct infeftment, efter hir husbandis deceis.

MEMORANDUM. Upon the ſext day of *Marche*, 1481, *Robert Danzelſtoun* wes perſewit be ane woman callit *Glen*, befoir the Lordis of counſall; and ſcho wald have cumin aganis hir aith that ſcho had maid in judgment befoir the officiall of *Glaſgow*; and thair wes ſchawin ane inſtrument, under the ſeill of the ſaid officiall, that ſcho conſentit to the alienatioun of ſic landis, and ſwoir that ſcho ſould never cum in the contrare thairof, and wald have had the ſaidis landis, alledgand, that it was hir conjunct infeftment, and maid revocatioun efter hir husbandis deceis, ſayand that he compellit hir thairto. The actioun wes deliverit aganis this woman. *Ja.* III. *fol.* 68. *act.* 101. 2 *April.* 1481.

C. XII. Alienatioun maid be the husband and the wife.

GIF the husband annalzeis his wife's conjunct-fie, and ſcho conſent thairto the time of the alienatioun, or zit efter the making thairof, ſcho may not repete nor ſeik the ſamin agane efter his deceis. 3 *Junij*, 1561, Marion Blyth *contra* Robert Scot *and utheris.* 1 *t. c.* 1259.

C. XIII. Anent reſtitutioun of conjunct-fie, quhen it happinis the husband to deceis within zeir and day.

MARIAGE beand lauchfullie contractit betwix twa perſounis, and the woman beand infeft in conjunct-fie of ony landis or tenement, gif the man deceis within zeir and day efter the completing of the mariage, the tocher-gude not beand payit to him, or utheris in his name, befoir his deceis; the woman ſall renunce and overgive hir conjunct-fie, or ellis pay the tocher; and ſwa renunceand the conjunct-fie, ſcho aucht and ſould be diſchargit of all payment of tocher. 12 *Julij*, 1533. Thomas Cuke *contra* Elizabeth Matthieſone, 1 *t. c.* 435.

C. XIV. Anent reſtitutioun of conjunct-fie, quhen the mariage failzeis and is not completit.

CONTRACT of mariage beand maid betwix twa parteis, and infeftment of landis gevin be virtue thairof, be reſignatioun or utherwayis, to the woman; gif it happinis the man to deceis befoir the completing of the mariage, or gif the ſamin may not be completit with-

without ony fault or failzie committit be the man, the ſamin is of nane availl, and aucht and ſould be reducit, becauſe the mariage never followit, nor on na wayis wes ſolempnizat in face of haly kirk, for the caus foirſaid; and thairfoir the woman may not bruik ony the ſaidis landis be virtue and in contemplatioun of the ſamin. 27 *Novemb.* 1554. Alexander MacNathane *contra* Geils Lawmond, 1 *t. c.* 738.

C. XV. Anent reſtitutioun efter divorcement.

SENTENCE of divorce beand pronouncit betwix the husband and the wife, decernand *quicquid alter alteri dotis, aut donationis cauſa propter nuptias, dediſſet*, to be reſtorit, the man may not ſeik reſtitutioun of the conjunct-fie; at the leaſt he ſould be repellit *ab agendo*, untill he offer reallie and with effect the tocher-gude reſſavit be him, ſpeciallie gif the ſamin be liquidat: And the like is underſtand of the wife ſeikand reſtitutioun of hir tocher-gude. 26 *Feb.* 1556, James Stewart *contra* Agnes Campbell, 1 *t. c.* 751.

Of the wife's dowrie and tierce.

C. I. Reſſonabill tierce.

ILK husband is obliſt of the law to give ane reſſonabill dowrie and tierce to his wife the time of the mariage; and gif he names not the ſamin expreſſie, ſcho ſould have, be reſſoun of tierce or dowrie, the thrid part of all the landis and heritage quhilk the husband hes the time of the mariage; for dowrie is underſtand to be the reſſonabill thrid part (pertening to ony manis wife) of all and haill his fie and heritage that he hes the time of the mariage, and in the quhilk he is then veſt and ſeaſit, as in propertie and fie; the quhilk is gevin to the wife, to the effect that, gif it happin hir husband to deceis befoir hir, ſcho may the mair eaſilie be maryit with ane uther man: And gif the husband names expreſſie, and aſſignis to his wife, the time of the mariage, a dowrie or tierce, he may do the ſamin at his awin pleſour, bot he may give to hir na mair nor the juſt thrid of the landis; for albeit dowrie may be leſs nor the thrid of the landis, zit it may not be abone nor excede the ſamin; and gif it happin to be mair, it ſould be reducit and meſourit efter the quantitie of the thrid, *Lib.* 2. *c.* 19. *De judic.* 108. For gif the air complene that ony woman hes mair nor the juſt tierce of his landis, the King, at his inſtance, ſall direct furth his precept and letteris to his Schiref, and his deputis, charging thame to meſour the ſamin juſtlie, and cauſe the reſſonabill tierce to be gevin to the woman in name of dowrie, and the twa part to the air and proprietar, *Lib.* 11. *c.* 19. *De judic. c.* 113. *Item*, Gif ony manis ſone and appeirand air marie a wife with conſent of his father, and expreſſie aſſignis to hir the juſt tierce of his landis in name of dowrie, ſcho may not at ony time thairefter be hard to ask or clame ony mair of his landis or tenementis: And gif hir husband happinis to deceis, his father zit beand in lyfe, his wife, efter his deceis, may call and perſew his father to warrand to hir the ſaid dowrie and tierce. *Ibid.*

C. II. Anent the Quenis dowrie.

ITEM, As to the dowarie of the Quene, it is ordanit, that the thrid of the Kingis rentis of aſſiſe, that is to ſay, of landis and cuſtumis

ſtumis, be aſſignit till hir tierce and dowarie allanerlie, and na forther. *Ja.* III. *fol.* 46. *act.* 3. *Octob.* 1466.

C. III. Tierce may pertene to the wife be ſpeciall proviſioun and reſervatioun.

GIF ony man put his ſone, or ony uther perſoun, in fie of his landis, and reſervis a tierce and thrid of the ſamin landis to his wife, be chartour and infeftment maid be him to the effect foirſaid, his wife, efter his deceis, aucht and ſould peaceablie bruik and joiſe the tierce of the ſaidis landis, for all the dayis of hir lifetime; and the maillis and proffeitis of the ſamin thrid, be reſſoun of the ſaid proviſioun and reſervatioun, aucht and ſould pertene to hir ſen the deceis of hir ſaid husband. 14 *Novemb.* 1486, Chriſtiane —— *ſpouſe of umquhile* Thomas Inglis, *contra* William Inglis *his ſone*, 1 *t. c.* 29.

C. IV. The laſt infeftment be and ſimple, may be prejudiciall to the firſt, contenand reſervatioun of ane tierce.

GIF ony puttis his ſone, or ony uther perſoun, in the fie of his landis, or ony part of the ſamin, with reſervatioun of ane reſſonabill tierce thairof to his wife, quhen the ſamin ſall fall, efter his deceis; and the ſaid ſone or uther perſoun reſign the ſaid landis in the handis of him quha annalzeit the ſamin to him of befoir; gif he annalzie or diſpone the ſamin of new, without ony reſervatioun of the ſaid tierce, his wife, efter his deceis, hes na richt nor title to ony tierce of the ſaidis landis, notwithſtanding the reſervatioun contenit in the firſt infeftment. 9 *April*, 1511, Jonet Stewart *contra* Johne Dumbar, 1 *t. c.* 1571.

C. V. The thrid part of the barn and barnzaird pertenis to the lady tiercer.

ANE lady havand the tierce of ony landis pertening to hir, aucht and ſould have alſo the thrid part of the barn zaird, and the thrid part, or cupple, of the barn to be uſit be hir for labouring and manuring of hir tierce: And the Schiref of the ſchire ſould ken hir to hir thrid part thairof, be ane breif of diviſioun, gif ſcho pleis to rais ony thairupon, or be ony uther way conform to the lawis of this realme. 17 *Novemb.* 1522, Jonet Lovell *contra* N. 1 *t. c.* 366.

C. VI. Of quhat landis tierce may be clamit.

NA wife can clame tierce of ony landis pertening to hir be deceis of hir husband, except the landis allanerlie, quhairin hir huſband deceiſſit laſt veſt and ſeaſit as of fie, at the peax of our ſoverane Lord; for gif he deceiſſit utherwayis veſt and ſeaſit thairintill, ſcho ſould have na tierce thairof. *Ult. Mart.* 1536. *the King and the Laird of* Balwerye, *contra* Margaret Broun, *relict of umquhile* Henrie Ramſay *of* Redy, 1 *t. c.* 487.

C. VII. Tierce may not be cravit of landis wodſet be the huſband befoir his deceis.

GIF ony man befoir his deceis ſellis and annalzeis landis to ane uther under reverſioun, and ſwa denudis him of the propertie thairof, his wife may crave na tierce of the ſamin landis, gif thay war not redemit in hir husbandis lifetime, bot efter his deceis be his air, or ony uther perſoun haveand powar and richt thairto: And albeit ſcho be ſervit and retourit to ane tierce thairof, and hir retour as zit ſtandand unreducit, zit nevertheles ſcho may not flit nor remove the tenentis, occupiaris of the ſamin, gif thay (be way of exceptioun) alledge that ſcho hes na richt nor title thairto for the cauſis foirſaidis. 9 *Feb.* 1558. 3 *Mart.* 1558. Jonet Fraſer *contra the tenentis of* Middildrum 1 *t. c.* 763.

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C. VIII. Tierce may be askit be reſſoun of a contract maid anent the fie of the landis to be gevin to the husband.

GIF ony man bindis and obligis himſelf in ane contract betwix his ſone and ony woman, to put his ſone in fie of his landis; and the ſamin not beand done be him, in his default, it happin the ſone to deceis, the mariage beand completit, his wife aucht and ſould, be reſſoun of the ſaid contract and obligatioun, bruik and joiſe ane tierce of the ſaidis landis, like as ſcho may do gif hir husband had deceiſt laſt veſt and ſeaſit in fie thairof. 11 *Januar.* 1561, *the Laird of* Blair *contra* Andro Hamiltoun.

C. IX. Tierce of conqueiſt landis.

GIF ony man havand landis marie a wife, and at the time of his mariage give to hir, in name of dowrie, ane juſt tierce thairof, and thairefter it happin him, be his induſtrie and diligence, to conqueis divers and ſindrie uther landis; nather the husband may give, nor zit may the wife clame in name of dowrie, mair nor the juſt thrid of the landis quhilkis he had the time of the mariage, gif at that time quhen he gave and aſſignit to hir the ſaid tierce, na mentioun, nor ſpeciall proviſioun was maid anent the tierce of landis that ſould happin to be conqueiſt efterwart, to be gevin to hir; becauſe generallie it is of veritie, that quhen ony dowrie is aſſignit to ony woman, and ſcho acceptis the ſamin the time of the mariage, ſcho may not thairefter clame mair nor ſcho hes alreddie reſſavit, in reſpect that ſcho wes anis content thairwith, albeit the ſamin be mekle or litle, bad or gude. *Lib.* 2. *c.* 19. *De judic. c.* 108.

C. X. Tierce of wadſet landis.

GIF ony man haveand landis in wadſet, and under reverſioun, deceiſis, leaveand behind him ane lauchfull wife, ſcho, efter his deceis, aucht and ſould have ane reſſonabill tierce of the ſaidis landis, to be bruikit be hir, untill the redemptioun thairof: And gif it happinis efterwart the ſamin to be redemit, the air, fra quhome the ſamin is redemit, ſould give and aſſigne to hir als mekle land, lyand in als gude and competent a place as the thrid of the ſaidis redemit landis, or ellis ſall deliver to hir the thrid part, or tierce, of the money deliverit and reſſavit be him for redemptioun of the ſaidis landis, to be wairit on landis be hir, to hir uſe and utilitie; or utherwayis to be bruikit and joiſit be hir, at hir pleſour, induring hir lifetime, ſcho findand ſufficient cautioun to him, that the ſaid ſowme of money ſall be furthcumand to him efter hir deceis. 3 *Julij*, 1507, Margaret Moncrief *contra* Robert Merſer, 1 *t. c.* 259.

C XI. Na tierce may be cravit of takkis of landis quhilkis ar redemit.

GIF landis be redemit fra ony manis air, conform to ane reverſioun contenand certane takkis of the ſamin landis, efter the lowſing, the wife, relict of him quha is deceiſſit, and quha had the ſaidis landis in wadſet, aucht and ſould not have ony tierce of the ſaidis takkis; bot the ſamin, all and haill, pertenis to the air allanerlie. *Penult. Julij*, 1562, N. Hepburne *relict of umquhile* David Home *of* Wodderburne, *contra the Laird of* Wodderburne, 1 *t. c.* 287.

C. XII. Tierce of moveabill gudis.

GIF ony man not havand landis, bot onlie money or movabill gudis, maryis a wife, and aſſignis to hir ane certane quantitie and part thairof, makand na mentioun of ony landis to be conqueiſt be him thairefter, albeit he happin to conqueis induring the time of the mariage ony landis or tenementis, his wife, efter his deceis, may not ask nor clame ony part of the ſaidis landis in name of tierce or dowrie,

dowrie, for the reſſoun and cauſe abone ſpecifyit. *Lib.* 2. *c.* 19. *De judic. c.* 108.

C. XIII. How a woman may be kennit to hir tierce.

GIF ony man deceis, his wife may obtene and put hirſelf in poſſeſſioun of hir tierce, and remane thairin with conſent of the air, gif the ſamin be occupyit be na uther perſoun: And gif the ſamin be not vacand, bot in the poſſeſſioun of ony man, in all or in part, or gif the air refuſe to ken and enter hir thairto, ſcho may rais ane breif of tierce, direct to the Schiref, to ken hir to ane reſſonabill tierce of the landis quhilkis pertenit to hir husband, *Lib.* 2. *c.* 19. *De judic. c.* 108. The quhilk breif ſould not be raiſit, nor reſſave ony proceſſe, aganis quhatſumever perſoun detenand or with-haldand the landis, except the air (quha of the law ſould warrand hir the ſaid tierce) be ſummonit and requirit to heir and ſie proceſſe led and deducit upon the ſaid breif, and to warrand to hir ane reſſonabill tierce, or to ſchew ane reſſonabill caus quhy he ſould not do the ſamin: And gif the landis quhilkis ſcho clamis be not occupyit be the air, bot be ſum uther perſoun, and the air grant and confes the ſamin ſould pertene to hir, be reſſoun of tierce; or zit gif he deny the ſamin, and the contrare being ſufficientlie provin be hir, he may be compellit to deliver the ſamin to hir, or then als mekle land als gude. And generallie, likeas the woman may not be compellit to anſwer or defend in ony actioun or cauſe concerning tierce or dowrie, without the air be callit in likewayis thairto; even ſwa it is not leaſum to hir to intent or perſew ony clame, querrell or contraverſie thairanent, without he be in like maner preſent, and fortifie and aſſiſt hir thairintill, *Lib.* 2. *c.* 9. *De judic. c.* 110. & 111. *Item*, The ſaid woman may raiſe the ſaid breif of tierce efter the deceis of hir husband, to be kennit to ane reſſonabill tierce of his landis, albeit the ſamin was ſpeciallie namit and aſſignit to hir the time of the mariage, or not namit nor aſſignit: And in this cais all perſounis that detenis and with-haldis the landis, ſall be compellit to anſwer to hir, quidder the ſamin be the air himſelf, or ony uther perſoun quhatſumever; and quhaſaevir happinis to be convenit and convict, ſall pay to hir the damnage, coiſtis and ſkaithis ſuſtenit be hir throw want of hir tierce; and mairovir, ſcho ſall have aſſignit and deliverit to hir be the air, in name of dowrie, ane juſt tierce of all and haill the landis and tenementis quhilkis his predeceſſour had the time he maryit the ſaid woman, pertening to him in propertie, *Lib.* 2. *c.* 19, 113. Attour, The Schiref of the ſchire, or ony uther ordinar Judge, within quhais juriſdictioun the landis lyis, be reſſoun of thair office and juriſdictioun, or be command of our ſoverane Lordis letteris, gif the ſamin be raiſit and impetrat be the partie, aucht and ſould divide equallie the tierce of the ſaidis landis fra the twa part thairof; that is to ſay, ane rig to the Lady tiercer, and twa riggis to the ſuperiour, or his donatour, to be bruikit be the ſuperiour, or his donatour, induring the time of the waird, ay and quhill the lauchfull entrie of the richteous air or airis thairto, and to be bruikit and joiſit be the ſaid Lady for all the dayis of hir lifetime, efter the form of cavill caſſin be ſone or ſchadow; and ſwa furth, quhill all the landis pertening to the husband deceiſt be dividit. Provyding that all paſturing, and uther pertinentis of the ſaidis landis, be dividit likewayis,

wayis as is abone expremit. 10 *Julij*, 1569, David Foreſtar *contra* Elizabeth Hamiltoun, 1 *t. c.* 148.

C. XIV. Anent the exceptiounis proponit anent wedowis, in hindering thame of thair tiercis.

ITEM, It is ſtatute and ordanit, anent the exceptioun proponit aganis wedowis perſewand and followand thair breifis of tierce, or the proffeit of thair tierce, quhilk is oft-times proponit aganis thay wedowis, that thay war not lauchfull wifis to the perſounis thair husbandis, be quhome thay follow thair ſaid tierce; That thairfoir, quhair the matrimonie was not accuſit in thair lifetimes, and that the woman askand this tierce beand repute and haldin as his lauchfull wife in his lifetime, ſall be tiercit, and bruik hir tierce, but ony impediment or exceptiounis to be proponit aganis hir, ay and quhill it be cleirlie decernit, and ſentence gevin, that ſcho wes not his lauchfull wife, and that ſcho ſould not have ane lauchfull tierce thairfoir. *Ja.* IV. *fol.* 106. *act.* 112. 11 *Mart.* 1503.

C. XV. Anent the proffeitis and dewteis of tierce.

GIF ony woman raiſe ane breif to be ſervit to ane reſſonabill tierce of hir husbandis landis, ſcho aucht and ſould be kennit and ſervit to ane tierce of all and haill thay landis in the quhilkis hir husband deceiſſit laſt veſt and ſeaſit, and of nane utheris, albeit the ſamin pertenis to hir husband, and wer diſponit be him to ony perſoun in his lifetime: And ſcho being ſervit to the ſaid tierce, the maillis, dewteis and proffeitis of all zeiris and termis preceiding hir ſervice, ſen the deceis of hir husband, als weill as efter the ſamin ſervice, induring hir lifetime, aucht and ſould pertene to hir, notwithſtanding that ſcho be ſervit thairto lang efter his deceis; becauſe in this cais *tempus deſervitionis retrotrahitur ad tempus mortis mariti.* 21 *Feb.* 1532, Elizabeth Creichtoun *contra* Williame Hamiltoun, 1 *t. c.* 407.

C. XVI. Of advocatioun of kirkis, cheif meſſuagis and manſis.

ADVOCATIOUN and donatioun of kirkis pertenis to ane woman be reſſoun of dowrie or tierce; ſwa that gif thair be bot ane kirk allanerlie quhilk pertenis to the air in patronage, and it happin the ſamin to vaik, induring the time of the tierce, and the womanis lifetime, the air may not, without hir conſent, preſent ony perſoun to the ſaid kirk, *as at mair lenth is declarit in ane uther place*, *Lib.* 2. *c.* 19. *De judic. c.* 112. The chemiſe or principall meſſuage ſould not be devidit nor gevin in name of dowrie or tierce to the woman, but ſould remane all and haill undevydit with the air, quha thairfoir is obliſt to big or give to hir ane uther meſſuage, for compenſatioun of the principall, *Lib.* 2. *c.* 19. *De judic. c.* 112. And gif thair be twa, or thré, or ma manſis, the principall manſe ſall not be devidit, bot ſall remane haill with the chemiſe, and the air is bundin of the law to ſatisfie the woman with ane uther manſe, effeirand to that part of the principall manſe quhilk micht pertene to hir be reſſoun of tierce or dowrie. *Lib.* 2. *c.* 19. *De judic. c.* 112.

C. XVII. Of the pertinentis of tierce.

GIF ony man give to his wife, in name of dowrie, ony certane landis with thair pertinentis, the quhilkis landis at that time hes na pertinentis pertening to him in propertie, and zit it happin him befoir his deceis to conqueis ony landis, as part and pertinentis of the landis namit and aſſignit to his wife in tierce, the wife, efter hir huſ-

bandis deceis, ſould have hir tierce of the ſaidis principall landis, togidder with the ſaid pertinentis. *Lib.* 2. *c.* 19. *De jud. c.* 113.

C. XVIII. The Lady tiercer is not obliſt to pay annuelrent annalzeit furth of hir tierce landis be the proprietar and frank-tenementar.

GIF ony puttis his air in fie of his landis, reſervand to himſelf the liferent of the ſamin, and to his wife efter his deceis, ane reſſonabill tierce; and thairefter the ſaid air, as fiar, with conſent of the ſaid frank-tenementar, and without conſent of the wife, to quhome the tierce wes reſervit, annalzie ane annuelrent, to be tane furth of the ſaidis haill landis; efter the frank-tenementaris deceis, the wife may not be compellit (be reſſoun of hir tierce) to pay ony part of the ſaid annulrent; bot the ſamin, all and haill, ſould be payit furth of the twa part during the Lady tiercearis lifetime, and, efter hir deceis, furth of the haill landis. 24 *Junij*, 1561, *the Lord* Ogilvie *contra the Lady* Ogilvie, 2 *t. c.* 181.

C. XIX. Of a ſecund tierce.

GIF ane woman have ane dowrie or tierce of ony landis or poſſeſſiounis, be the deceis of hir husband, and ane uther woman deſire ane tierce of the ſamin landis, ſcho may not ask, clame, nor crave ony landis, poſſeſſiounis, or uther thingis quhilk pertenis be reſſoun of tierce at that ſamin time to the firſt woman, *Lib.* 2 *c.* 19. *De judic. c.* 112. The Lady of the ſecund tierce may crave na tierce of ony thing that pertenis to the Lady of the greit tierce, induring hir lifetime. Attour, gif ony man deceis veſt and ſeiſit in ony landis, leivand behind him ane lauchfull wife, efter his deceis, his ſone happinis to die, leivand in like maner ane lauchfull wife behind him, the firſt manis wife ſall have the greit tierce of the faidis landis, and the ſecund tierce thairof allanerlie pertenis to the ſonis wife, 8 *Mart.* 1528, Johne Johnſtoun *contra* Jonet Cunynghame, 1 *t. c.* 295. *Item*, The ſecund Lady tiercear may rais breivis of the Kingis chapell, to be ſervit and alſo kennit be the Schiref to ane greit tierce, notwithſtanding ane uther Lady of the greiter tierce is living, and in poſſeſſioun thairof; bot ſcho may not enter to the ſaid tierce, ſa lang as the Lady of the greit tierce is living. 15 *Mart.* 1541, 2 *t. c.* 79.

C. XX. Propertie pertenis not to dowrie.

THE fie and propertie of landis aſſignit in dowrie, or tierce, to ony woman na wayis pertenis to hir, bot remanis with the air as proprietar thairof. *Lib.* 2. *c.* 19.

C. XXI. Warrandice of tierce.

GIF ony perſoun occupyand and with-haldand landis clamit be a woman be reſſoun of tierce, be callit and perſewit be hir for the ſamin, and he thairfoir call the air to warrand the ſamin to him, the air, albeit he be of perfyte age, or of les age, gif he hes ony uther landis quhilks pertenit to the husband of the ſaid woman; in this cais, that perſoun that callit the air for warrandice, ſall keip and retene to himſelf the landis acclamit fra him be the woman, and the air ſall be compellit to give to hir of his uther landis als mekle as extendis to the tierce acclamit be hir: Bot gif the air have na uther landis quhilkis pertenit to the ſaid womanis husband, ſcho ſall recover hir reſſonabill tierce aganis the ſaid perſoun occupyar thairof; and the air ſall ſatisfie him, and give to him als mekle als gude land thairfoir, *De judic. c.* 89. *Item*, Gif ony woman callis and perſewis for hir tierce and dowrie, ony perſoun quha is not heri-

tablie

tablie infeft in the landis acclamit be hir, bot hes allanerlie tak and aſſedatioun thairof, for certain zeiris, ſet and gevin to him be the ſaid womanis husband, in his lifetime, of the quhilk certane termis ar zit to rin efter the deceis of hir ſaid husband, and the takkilman, quha is perſewit be the woman, deſire to call the air for his warrand, he ſall not be hard to do the ſamin; bot the woman ſall recover and obtene fra him hir tierce of the landis occupyit be him: And he, efter the iſche and out-rinning of his tak and aſſedatioun, ſall bruik and joiſe the twa part of the ſamin landis, until he be ſatisfyit for wanting of the tierce thairof. *De judic. c.* 89.

C. XXII. The vieu and ſicht of landis

NA vieu or ſicht of landis hes place aganis the breif of tierce, quhair the woman, aſker thairof, hes nathing in name of tierce: Nor zit the ſicht of the landis hes ony place in dowrie or tierce, quhair the huſband deceiſſit veſt and ſaiſit, *Lib.* 4 *c.* 43.

C. XXIII. Alienatioun of tierce.

ITEM, It is to wit, that the wife hes na powar to diſpone or put away hir dowrie or tierce, induring hir husbandis lifetime; for the wife is allanerlie under the powar and ſubjectioun of hir huſband; and thairfoir hir dowrie, with all uther thingis that may pertene to hir, is under the diſpoſitioun of hir huſband: And thairfoir the huſband in his lifetime may give, ſell, annalzie, or put away at his pleſour, his wife's dowrie or tierce, and the wife ſould frelie conſent thairto, like as ſcho ſould conſent and obey him in all thingis, quhilk is not aganis the law and will of God: And gif ſcho conſentis to the ſaid alienatioun and diſpoſitioun, or makis not contradictioun thairto, and ſwa the husband dois ſell and annalzie hir tierce, ſcho, efter his deceis, hes na actioun of repetitioun aganis the buyar thairof, gif ſcho confes, or it be proven in judgment, that the time quhen hir husband annalzit the ſamin, ſcho maid na contradictioun thairto, *Lib.* 2. *c.* 19. *De judic. c.* 108. Bot ſcho may, efter hir huſbandis deceis, revoke all alienatiounis maid be him of hir tierce, gif ſcho, befoir ane Judge, and in judgment, conſentit not; or zit may prove ſufficientlie, that he, the time of the alienatioun, had uther landis, gudis or geir, ſufficient for his ſuſtentatioun, or for performance of his neceſſare effairis. *De judic. c.* 108.

C. XXIV. How a woman may want or tyne hir dowrie.

ANE woman may want or tyne hir dowrie divers maner of wayis: 1. Gif ſcho be ſa young, that ſcho may not have fleſhlie dealing with hir huſband. 2. Gif the huſband had ony land of his firſt wife, befoir the mariage of the laſt wife, ſcho, efter his deceis, may not aſk ane dowrie or tierce thairof; for hir husband was bot onlie keipar of that land, *Lib.* 2. *c.* 20. *Lib.* 4. *c.* 49. *De judic. c.* 106. As quhen ony man maryis ane heretrix, and ſcho deceiſſand havand ane bairn to him, he bruikis the landis during his lifetime, and the ſecund wife ſall have na tierce of the ſaidis landis. 3. Ane woman tynes hir dowrie, gif hir huſband wes convict and condampnit in judgment as ane traitour to the King and realme, or of his armie or hoiſt, or in ony uther cauſe of felonie, *Lib.* 2. *c.* 20. *Lib.* 4. *c.* 49. *De judic. c.* 106. 4. Scho tynes hir dowrie, gif ſcho be lauchfullie befoir ane Judge partit and divorcit fra hir huſband be reſſoun of adulterie committit be hir, *Lib.* 2. *c.* 20.

Lib.

Lib. 4. *c.* 49. 5. Gif the wife willinglie leave or pas away from hir huſband, or tarie and remane in adulterie with ony man, and beis convict thairof, ſcho ſall have na actioun in ony time cuming, for ony dowrie or tierce of hir huſbandis landis, except hir huſband, befoir his deceis, willinglie, and without authoritie of ony Judge, was reconcilit with hir, and ſuffered hir, as his lauchfull wife, to dwell and remane with him thairefter; for in this cais ſcho ſall have gude actioun and title to clame and aſk ane reſſonabill tierce, notwithſtanding hir treſpas foirſaid, *Leg. Foreſt. c.* 77. 6. Gif ony wife in hir awin and hir husbndis lifetime be ſeparate or partit fra hir husband, for ony turpitude or imperfectioun of hir bodie, or for ony unhoneſt blame, ſcho may never in ony time cuming ask or clame dowrie or tierce, *De judic. c.* 83, 113. 7. A woman ſould have na dowrie, gif ſcho be partit and divorcit fra hir huſband for propinquitie and neirnes of blude on hir half and ſide; and nevertheles, the bairnis gottin betwix thame befoir the divorcement, are lauchfull, and may, be the lawis of this realme, ſucceid as airis to thair parentis; becauſe the band of mariage being lauchfullie proclamit, na lauchfull impediment wes objectit and fund, and the ane of the parteis, *viz.* the husband, knew na ſic impediment the time of the mariage, and ſwa wes *in bona fide. De judic. c.* 83. *c.* 113.

C. XXV. Alienatioun of landis ſtoppis tierce.

GIF ony man gevis heritabill infeftment of all and haill his landis, or ony part thairof, to be haldin of his immediat ſuperiour, or of himſelf and his airis, with ſeaſine following thairupon, his wife, efter his deceis, be reſſoun of the ſaid infeftment and ſeaſine, is excludit fra all tierce of the ſaidis landis contenit thairintill. 17 *Mart.* 1542, 1 *t. c.* 1072. *Item*, Gif ony man makis reſignatioun of all and haill his landis, or ony part of the ſamin, in the Superiouris handis, *ad perpetuam remanentiam*, or in the favouris of ony uther perſoun, reſervand allanerlie the frank-tenement thairof to himſelf for his lifetime, or without ony reſervatioun thairof, and ſeaſine be lauchfullie tane, conforme to the ſaid reſignatioun; his wife, efter his deceis, hes na title nor richt to ony tierce or liferent of the landis reſignit in maner foirſaid; becauſe the wife can crave na tierce bot of the landis allanerlie in the quhilkis hir huſband deceiſt laſt veſt and ſeaſit as of fie, 7 *Mart.* 1561, *the Counteſſe of* Crawfurd *contra the Erle of* Crawfurd, 16 *July*, 1543. And in like maner, the wife may crave na tierce of landis annalzeit be hir husband befoir his deceis, under reverſioun, *ult. Julij*, 1561, *the Lady* Zeſter *contra the Lord* Zeſter. And likewayis ſould have na tierce of landis, in the quhilkis hir husband deceiſt as Superiour thairof. 14 *Mart.* 1541, *the Laird of* Kilbirnie *contra* Robert Cunynghame, 1 *t. c.* 1083.

C. XXVI. Divorcement ſtoppis tierce.

ANE woman being divorcit lauchfullie fra hir huſband befoir his deceis, ſould have na tierce of his landis efter his deceis. 24 *Mart.* 1563. Catherine Watſoun *contra* Archibald Gadderer, 1 *t. c.* 1017.

C. XXVII. Deceis within zeir and day ſtoppis tierce.

GIF the husband deceis within zeir and day efter the completing of the mariage, na tocher-gude beand payit to him, nor na bairnis gottin betwix him and his wife, ſcho aucht and ſould have na tierce of

of his landis pertening ony wayis to him the time of his deceis. 6 *April* 1546, *the Schiref of* Perthis *decreit* contra *the Lady* Athole; *for the quhilk ſcho intentit reductioun befoir the Lordis, and nathing done in the regiſter thairintill.* 1 *t. c.* 1380.

C. XXVIII. Tierce cumis ſumtimes under forefaltour, ſumtimes not.

GIF ony Superiour happin to be forefaltit for crime of treaſoun or leſe-majeſtie, his vaſſalis wife aucht and ſould bruik the tierce of the vaſſell, hir husbandis landis, gif the ſamin fell to hir be reſſoun of hir ſaid husbandis deceis, befoir the dome of forefaltour gevin and pronounceit aganis the Superiour, albeit ſcho was not ſervit nor kennit thairto, nor in poſſeſſioun thairof befoir the ſaid forefaltour: Bot gif the tierce fallis to ony woman efter the forefaltour, the ſame cumis under forefaltour in like maner, as the twa part. 22 *Junij*, 1542, Margaret Jardin *contra the Lord* Somerville, 2 *t. c.* 110.

C. XXIX. Tierce pertenand to the immediat vaſſellis wife, fallis not in ward.

GIF ane vaſſell, or immediat tenent, deceis within this realme, quhairthrow his landis fallis in ward in his Superiouris handis, and he leave behind him ane lauchfull wife, the thrid part of the ſaid ward landis ſall remane with hir during hir lifetime, be reſſoun of hir tierce, and ſall not cum under ward; ſwa that the Superiour, or his donatour, may na wayis call, poind or diſtreinzie hir for the maillis and dewteis of the ſame; becauſe be the law of this realme, the greit tierce, nor the ſecund tierce, pertening to the wifis of immediat vaſſellis deceiſſand, fallis not in ward. 17 *Feb.* 1535, *Erle of* Huntlie *contra Lord* Forbes. 6 *Novemb.* 1476, Patrick Wauchope *and his wife* contra George *Lord* Seytoun, 1 *t. c.* 19.

C. XXX. Tierce ſumtimes fallis in ward.

GIF ane Superiour annalzeis and diſponis landis to ony immediat tenent to be haldin of him and his airis, be ſervice of ward and releif, and the ſaid tenent mak ane uther diſpoſitioun of the ſaidis landis, or of ony part thairof, to ony uther perſoun, to be haldin of him be ſervice of ward and relief, or utherwayis, and it happin the ſaid immediat tenent, to quhome the firſt diſpoſitioun was maid, to deceis, and thairthrow the ſaidis landis to cum in the Superiouris handis be reſſoun of ward; the wife or ſpouſe of the ſaid ſub-tenent, to quhome the ſaid ſecund alienatioun wes maid, may on na wayis clame or have ony tierce of the ſaidis landis be deceis of hir husband, gif it happin him to deceis efter the ſaid immediat tenent, quha wes his narreſt overlord; becauſe all and haill the ſaidis landis were in the Superiouris handis be reſſoun of waird, throw the deceis of his immediat tenent, quha wes Superiour to the ſaid wife's husband, and deceiſt befoir him, as ſaid is, 3 *Mart.* 1505, *the Lord* Ogilvie *contra* Chriſtiane Logie. 24 *Mart.* 1505, Robert *Lord* Creichtoun *contra* Margaret Moncreif, 1 *t. c.* 261. Attour, the Lady tiercear, or hir tenent, on na wayis may be removit be the Superiour nor his donatour, fra ony landis pertening to hir be reſſoun of tierce, notwithſtanding that the haill landis, or ony part thairof, quhilk pertenit to hir husband the time of his deceis, be fallin in the Superiouris handis be reſſoun of ward.

C. XXXI. Tierce cumis under recognitioun.

LANDIS beand recognoſcit in the Superiouris handis be reſſoun of alienatioun thairof, all tierces of the ſamin quhilk pertenis to the Ladies tiercearis, and fallis to thame efter the ſaid alienatioun

be deceis of thair husbandis, cumis in the ſaid Superiouris handis, togidder with the twa part thairof, be reſſoun of the ſaid proceſſe and forefaltour of recognitioun, and may be diſponit be him at his pleſour, 23 *April.* 1505, *the King* contra Margaret Blair, 1 *t. c.* 220. *Item,* Landis beand recognoſcit in the Superiouris handis, be reſſoun of the alienatioun thairof, gif the principall tenent compone and agrie with the Superiour thairanent, and obtene new infeftment agane of the ſamin landis, all Ladies of tierce, havand ane tierce thairof be deceis of thair husbandis, aucht and ſould bruik and joiſe thair tierces, ſiclike as thay ſould have had and bruikit gif the ſaidis landis had not bene recognoſcit, thay payand a part of the ſaid compoſitioun efter the rate and proportioun of thair tierces. 4 *Decemb.* 1512, John Creichtoun *contra the Erle of* Glencairne. 12 *Decemb.* 1512, Giles Greirſone *contra the Erle of* Glencairne, 1 *t. c.* 191.

C. XXXII. Na tierce ſould be of landis fallin in non-entres.

GIF ony man, havand landis of ane Superiour, deceiſſis, leivand behind him ane lauchfull wife, na tierce nor thrid thairof aucht to pertene to hir be reſſoun of his deceis, gif the ſamin landis be in non-entres throw his predeceſſouris deceis and non-entrie thairto; becauſe ſcho can have na mair richt to the thrid, nor hir husband had to the twa part thairof the time of his deceis. And it is of veritie, that he deceiſſit not veſt nor ſeaſit thairintill; and thairfoir the thrid, als weill as the twa part thairof, pertenis to the Superiour be reſſoun of non-entres. 11 *Decemb.* 1506, *Abbot of* Dunfermling *contra* Margaret Crawfurd, 1 *t. c.* 242. 17 *Januar.* 1505, Roger Kilpatrik *contra* Elizabeth Macdouell.

C. XXXIII. Tierce may not fall in non-entres.

LANDIS falling in non-entres be deceis of the immediat heritabill tenent thairof, leivand behind him a relict, or Lady tiercear, all the landis pertening to hir be reſſoun of tierce is fré from non-entres, and cannot pertene to the Superiour be reſſoun thairof, bot to hir, in reſpect of hir tierce. 10 *Mart.* 1567, *Kingis Advocate and* Williame Oliphant, *contra* L. Oliphant, 1 *t. c.* 1371.

Lawis and practiques anent tutorie.

C. I. To quhom all tutoris ar gevin.

TUTORIS are gevin to pupillis, *viz.* to ane pupill beand maill, untill he be fourtene zeir auld, and unto femellis untill thay be of twelf zeiris. *De maritag. c.* 14. *De tutor. c.* 1.

C. II. Thré kyndis of tutoris.

THAIR ar thré kindis of tutoris; for ſum tutoris ar teſtamentaris, ſum tutoris of law, and ſum ar tutoris dative. The tutor teſtamentar ſould be preferrit to the reſt; and quhair thair is na tutor teſtamentar, the tutor of law ſould have place; and failzeing of thame baith, the King may conſtitute a tutor dative, *De maritag. c.* 14. *De tutor. c.* 1. The tutor teſtamentar is gevin be the father in his teſtament and latter will. The tutor of law, or lauchfull tutor is ſervit tutor be ane breif of the chancellarie befoir the Schiref of the ſchire, quhair the pupill dwellis, and thairefter the King gevis to him ane teſtimoniall under his greit ſeill, upon the retour of his ſervice, 14 *Julij,* 1557, Andro Wod *of* Largo *contra* Elizabeth Monypenie. The tutor dative is maid and gevin be

be the King, quha may diſpone the ſamin at his awin pleſour to ony perſoun be his gift thairof under the quarter ſeill, 4 *Feb.* 1575, Thomas Huntar *contra* Duncan Huntar, 1 *t. c.* 1209.

C. III. A tutor teſtamentar may be maid under forme of inſtrument.

ANE tutor teſtamentar may be maid be the father, or uther havand powar thairto, under forme of inſtrument allanerlie, without ony teſtament or latter will: And gif the tutor be of les age the time of the ſaid conſtitutioun, he efterwart cumand to perfyte age of xxv. zeiris, may enter to the adminiſtratioun of the office of tutorie. 9 *Maij*, 1558, Thomas Diſhingtoun *contra* Mattho Hammiltoun.

C. IV. The privilege and prerogative of tutoris.

THE tutor teſtamentar, beand man or woman, ſould be preferrit to the tutor of law; and thairfoir, gif thair be ane tutor teſtamentar, the tutor of law hes na place: And ſiclike, the lauchfull tutor, or tutor of law, ſould be preferrit to the tutor dative; that gif thair be ony tutor of law lauchfullie ſervit and admittit, the tutor dative ſould na wayis be admittit. 10 *Feb.* 1547, 22 *Mart.* 1551, 10 *Decemb.* 1563, Alexander Sinclair *contra* Jonet Gordoun, 1 *t. c.* 1097.

C. V. Tutoris teſtamentar may not be gevin be him quha hes not fatherlie powar abone the pupill.

GIF the father lauchfullie maryis his ſone, and puttis him in the ſie of his landis, and thairefter the ſone deceiſſis, leivand behind him ane air, gottin of his bodie, of les age, and within tutorie; be the law and conſuetude of this realme, the ſaid pupill was, the time of his fatheris deceis, in his fatheris powar allanerlie, and be reſſoun of his deceis mad fré of all fatherlie powar, and on na wayis in the powar of his gudſchir, grandſchir, or ony utheris his predeceſſouris zit on life: And thairfoir, gif ony of thame makis and conſtitutis in thair teſtament or latter will, ony tutor teſtamentar to the ſaid air, beand zit pupill, the ſamin conſtitutioun, with all that followis thairupon, is of nane availl, force, nor effect, and may be reducit as maid in fraud and prejudice of the tutor of law, and failzeing him of the richt grantit to our ſoverane Lord be reſſoun of his crown, in making and geving tutoris dative to pupillis not lauchfullie providit of uther tutoris. 17 *Octob.* 1528, *the King contra* Walter Oliphant *and utheris*, 1 *t. c.* 342.

C. VI. Efter the death or renunciatioun of the tutor teſtamentar, the tutor of law hes place.

GIF the tutor teſtamentar happin to deceis, or renunce his office of tutorie, the narreſt agnate or kinniſman on the fatheris ſyde to the pupill, within zeir and day efter his deceis or renunciatioun, may rais ane breif, and be ſervit and retourit tutour of law to the pupill; quhilk gif he do, he aucht and ſould bruik and joiſe the office of tutorie, and have the keiping of the pupillis perſoun, and adminiſtratioun of his gudis and geir, during the time of the tutorie: And gif ony perſoun obtenis of the King ane gift of tutorie dative within the ſaid zeir and day, he on na wayis ſould be admittit to the office of tutorie, nor preferrit to the ſaid tutor of law; becauſe the King may not diſpone the office of tutorie dative to ony perſoun, untill the compleit iſche and out-rynning of ane zeir and day efter the deceis or renunciatioun of the tutor teſtamentar; bot that beand bypaſt, he may do the ſamin, and provide for ane tutor to the

the pupill, that he be not deſtitute of ane guyder and governour, 1 *Feb.* 1553, James Davidſone *contra* Alexander Studeman.

C. VII. The mother may be tutrix.

THE mother may be tutrix to hir bairn, bot ſcho may not be preferrit to the tutor teſtamentar, albeit ſcho ſould be preferrit to all tutoris of law and datives, gif ſcho promit be word not to marie efter the deceis of hir husband, and mairovir ſcho ſould offer all hir gudis and geir, moveabill and unmoveabill, to renunce and diſcharge the office of tutorie, gif ſcho thairefter maryis ane husband, and makis not compt and rekoning of hir intromiſſioun: Attour, gif ſcho maryis, all hir husbandis gudis and geir is bund and oblift of the law (without ony farther expreſſe obligatioun) for juſt compt and rekoning to be maid to the pupill, *De maritag. c.* 14. *De tutor. c.* 1. Attour, the woman may be tutrix teſtamentar to hir bairnis, ſa lang as ſcho remanis wedow: And gif ſcho beand left be hir husband tutrix teſtamentar to ony pupill, and thairefter maryis, ſcho tines and forefaultis the office of tutorie: And gif the ſaid pupill intentis and perſewis ony actioun efter the completing of hir mariage, not havand ane uther tutor admittit in the ſaid tutrix place, the defendar hes juſt richt be way of exceptioun to repell him *ab agendo*; becauſe the ſaid tutrix hes tint hir office in maner foirſaid, and the perſewar, beand pupill, is not lauchfullie authorizit be ane tutor, 27 *Januar.* 1569, James Sandilandis *of* Calder, *contra the tenentis of N.* 27 *Junij*, 1533, 1 *t. c.* 914. And ſiclike, ane woman beand left tutrix *ſimpliciter*, without ony reſtrictioun or conditioun contenit in the teſtament or latter will, *&c. Vide penult. Novemb.* 1553, 1 *t. c.* 1172. And attour, gif the mother be maid and conſtitute tutrix teſtamentar to hir bairn, and defiles hir bodie be fornicatioun, or committing of adulterie with ony man, ſcho foirfaultis and tynes the office of tutorie, and the narreſt agnat to the pupill ſucceidis in hir place as tutor of law, 14 *Julij*, 1557, *the Laird of* Largo *contra* Elizabeth Monypenie, 1 *t. c.* 754.

C. VIII. A tutor teſtamentar may be gevin to the bairn in the motheris womb.

THE father, in his teſtament or latter will, may give ane tutor teſtamentar to his bairn beand in the motheris womb unborn the time of his deceis, quhidder it be male or female. 11 *Mart.* 1555, 2 *t. c.* 261, Murray *contra* Merſchall.

C. IX. Anent a pupill beand air to his mother deceiſt, and havand his guidſchir and father on life.

ALBEIT the pupill be air and ſucceſſour to ony landis or uther rentis to his gudſchir on the motheris ſyde, nevertheles it is not leaſum to the ſaid gudſchir to give ane tutor teſtamentar to him, ſpeciallie his father beand on life, quha is tutor of law to him. 2 *Decemb.* 1575, N. Kilgour *in* Kirkcaldie *contra N.* 2 *t. c.* 377.

C. X. Of ane tutor, and his age.

ITEM, It is ſtatute and ordanit, anent the breif of tutorie, that it be underſtandin in time cuming, that he that is narreſt agnat, and of twentie five zeiris of age, fulfilling the laif of the the punctis of the breif, ſall be lauchfull tutor, ſuppois the child that happinis to be in tutorie have ane zounger brother or ſiſter; notwithſtanding that the agnat is not immediatelie to ſucceid to the child, becauſe of zounger brether and ſiſteris. *Ja.* III. *fol.* 58. *act.* 64. 9 *Maij*, 1474.

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C. XI. The narreſt kinniſman of the father ſould be tutor in law.

THE narreſt agnat and couſing of the fatheris ſide aucht and ſould be lauchfull tutor to the pupill, gif he be of lauchfull age, and immediat to ſucceid to the pupill, gif it happin him to deceis without airis of his bodie, quhidder the ſaid agnat be ane Abbot or uther eccleſiaſticall perſoun; the quhilk, be the law and conſuetude of this realme, are not ſecludit fra ſucceſſioun, and ſwa conſequentlie aucht to be admittit to the office and charge of tutorie; *quia, ubi eſt ſpes & commodum ſucceſſionis, ibi et onus tutelæ eſſe debet.* 12 *Mart.* 1529, *the King contra* Alexander Foreſtar *Proveſt of* Corſtorphin.

C. XII. The guidſchir is tutor lauchfull to the nevoy.

THE gudſchir of the fatheris ſide is adminiſtrator and tutor of law to his nevoy; and albeit he be not ſervit be ane breif, he ſould be preferrit to the tutor dative. 23 *April.* 1554, *N. contra the Laird of* Parbroth, 2 *t. c.* 250.

C. XIII. The tutor of law ſould have place quhill the tutor teſtamentar be of perfyte age.

GIF the tutor teſtamentar be not of perfyte age, in the meane time the tutor of law ſall have place, and be tutor, untill the perfyte age of the tutor teſtamentar; and thairefter the tutor of law ſould ceaſe and give place to the tutor teſtamentar. 1 *Junij*, 1565, *the Laird of* Findlater *contra the Lady* Findlater, 2 *t. c.* 306.

C. XIV. The tutor of law ſould be ſervit, and ſould find cautioun within zeir and day.

THE tutor of law ſould be ſervit tutor, and alſo find cautioun ſufficient within zeir and day, *de fideli adminiſtratione, ac de rationibus reddendis*: And gif he ſufferis zeir and day to paſs over without finding of cautioun, albeit he wes ſervit tutor within zeir and day, the tutor dative lauchfullie maid and conſtitute, and findand and offerand ſufficient cautioun, ſould be preferrit to him in the office of tutorie. *pri. Julij*, 1574, Williame Johnſtoun *contra Mr.* Thomas Craig, 2 *t. c.* 361.

C. XV. Bairnis gottin be a baſtard father, can have na lauchfull tutor.

ANE baſtard deceiſſand, and leivand behind him bairnis lauchfullie gottin of his bodie, beand of les age and pupillis, without ony tutor teſtamentar, left be thair father to thame, in his teſtament or latter will, the King may give to thame ane tutor, becauſe thay cannot have ony agnat or kinniſman of the fatheris ſide, 10 *Julij*, 1534, 1 *t. c.* 988.

C. XVI. Ane woman may be tutrix dative.

ANE woman may be gevin and conſtitute be the King tutrix dative, ſpeciallie the mother to the dochter or ſone. 19 *Decemb.* 1548, 1 *t. c.* 1100.

C. XVII. The tutor of law ſould find cautioun.

ANE beand ſervit tutor lauchfull, be ane breif to ane pupill, and thairthrow tending to intromet with the pupillis landis, gudis and geir, may be chairgit to find ſufficient cautioun, gif the pupill, or ony uther in his name, meanis thame to the Lordis thairanent: And all and ſindrie the tenentis and occupiaris of the pupillis landis, heritage, takkis, ſteidingis or poſſeſſiounis, and all uther intromettouris with his gudis and geir, and annuelrentis, may in like maner be diſchargit to anſwer and obey the ſaid tutor in his office of tutorie, nather pay to him ony of the ſaid pupillis maillis, fermis, dewteis, or utheris gudis, unto the time he find ſufficient cautioun and ſovertie befoir the Lordis of counſall, that he ſall mak and

give to the pupill, being at his perfyte age of fourtene zeiris, juſt compt, rekning and payment of all gudis, maillis, fermis, proffeitis, and dewteis pertening to the pupill, that he ſall happin to intromet with be vertew of his office of tutorie, 13 *Decemb.* 1541, Alexander Leſlie *contra M.* Johne Leſlie. And gif the tutor happinis to intromet with the gudis and geir of the pupill, not beand reſponſal thairfoir, he may be removit fra intromiſſioun, unto the time he find ſufficient cautioun in maner abone expremit. 15 *Jan.* 1533, 1 *t. c.* 656.

C XVIII. He may not perſew, unles he find cautioun.

ANE tutor may not perſew, as tutor, in judgment, except he firſt find cautioun for leil and trew adminiſtratioun in his office, and for juſt compt and rekning. 16 *Decemb.* 1556, *the tutor of* Congiltoun *contra the Lady* Congiltoun.

C. XIX. The tutor dative is ſumtimes preferrit to the tutor of law.

GIF ony perſoun obtene of the King ane gift of tutorie dative, and according thairto findis ſovertie for lauchfull adminiſtratioun, and is in poſſeſſioun of the pupillis gudis and geir, or of the keiping of his perſoun, and zeir and day being bypaſt fra the deceis of the pupillis father, befoir the narreſt agnat be ſervit and retourit be ane breif as tutor of law to the ſamin pupill, and findis cautioun for leill and trew adminiſtratioun of his gudis and geir; in this cais the tutor dative aucht and ſould be preferrit to the tutor of law; albeit utherwayis, and be the law, the tutor of law is preferrit to the tutor dative. 18 *Feb.* 1551, *the Laird of* Weymis *contra* James Clepan. 1 *t. c.* 709.

C. XX. The firſt gift, and firſt cautioun, preferrit to the laſt gift, and firſt poſſeſſioun.

GIF the King give and diſpone to twa ſindrie perſounis, twa ſindrie giftis of tutorie dative to ane pupill, the firſt gift, with the firſt cautioun, ſould be preferrit to the laſt gift, with the firſt poſſeſſioun and intromiſſioun with the pupillis gudis and geir. 9 *Decemb.* 1551, 2 *t. c.* 240.

C. XXI. The King may diſpenſe with the tutouris les age.

NA perſoun may be ane tutor to ane pupill be the law of this realme, except he be of xxv. zeiris compleit; zit nevertheles, albeit he be within the ſaid age, and zit of ſufficient judgment and qualiteis, the King may diſpenſe with him tuiching his les age: And gif he be tutor of law, the King may charge all perſounis that ſall happin to paſs upon the inqueiſt for ſervice of the breif of tutorie, to ſerve him tutor, notwithſtanding of his les age; certifying thame, that throw doing of the ſamin thay ſall incur na danger or errour thairthrow. 9 *Junij*, 1548, *Mr.* Johne Henryſon of —— *contra* James Henryſon *of* Fordel, 1 *t. c.* 688.

C. XXII. Sumtimes a curatour may be adjoinit to the tutor.

ANE tutor beand negligent in his office of tutorie in ſic thingis as concernis the pupillis weill; or zit gif he be unhabill in the adminiſtratioun of his office, the pupill may deſire befoir ane Judge ane curatour, *tam ad lites, quàm ad negotia*, to be adjoinit to his tutor for his help and ſupplie. 8 *Julij*, 1534, 1 *t. c.* 985.

C. XXIII. Ane minor may ſet aſſedatioun to ane of his tutoris, with conſent of the reſt.

ANE minor havand divers tutouris or curatouris, may ſet to ony ane of thame, with conſent of the reſt, tak and aſſedatioun of landis or poſſeſſiounis pertening to him, for the ſpace of ninetene zeiris,

zeiris, or utherwayis; and aucht and ſould warrand the ſamin, gif it be not ſet to his enorme hurt and ſkaith. 17 *Mart.* 1561, William Sinclair *contra* Margaret Sinclair.

C. XXIV. Of alienatioun maid be ane minor.

ANE minor, havand curatouris, may not annalzie, give, or diſpone his landis or heritage without thair conſent; and gif he dois utherwayis, the ſamin to be null in the ſelf. Gif the minor, not havand curatouris, annalzeis or diſponis his landis to ony perſoun, it is not in the ſelf null; bot the minor within lauchfull time may revoke the ſamin, and ſeik reſtitutioun *in integrum.* 20 *Mart.* 1561, Johne Kincaid *contra N. 2 t. c.* 283.

C. XXV. Of warning in actiounis of redemptioun, &c. maid to the minor onlie.

WARNING in cauſis of redemptioun, and als in actiounis of removing, maid to ane pupill or minor, havand tutoris and curatoris the time of the warning, is of nane availl, force nor effect, gif the tutoris and curatoris be not likewayis warnit. 29 *Mart.* 1563, Pa. *Mr. of* Lindſay, *contra* Elizabeth Lindſay, 1 *t. c.* 1295.

C. XXVI. The tutor beand in ward, the pupill may not be perſewit.

GIF ony actioun or cauſe be intentit aganis ane pupill and his tutor, and befoir the intenting thairof, or thairefter, the tutor be commandit to ward be the Kingis Grace, the actioun and cauſe aucht and ſould be continewit and delayit aganis the ſaid minor, untill his tutor, quha ſould have defendit him, be fred and relevit fra his captivitie and ward; and in the mean time of the continuatioun and indurance in ward of the tutor, all lauchfull defences and exceptiounis ar reſervit to baith the parties, and all preſcriptiounis aucht and ſould ſleip and ceis, quhilkis utherwayis micht have run and had courſe in the ſaid matter. 4 *Decemb.* 1500, William Douglas *contra* Robert Boyd, *and* Johne Kernis *his tutor*, 1 *t. c.* 196.

C. XXVII. A minor beand in ward, ſould be defendit be his Superiour.

ANE minor beand in ward in the Kingis or uther Superiouris handis, na actioun or clame tuiching his ward-landis may be intentit or proponit aganis him, except the King, or his uther Superiour, be warnit to compeir for his defence; becauſe the minor ſould be defendit in all ſic actiounis be him in quhais handis and powar he is, be reſſoun of ward. *Pen. Mart.* 1501, *N. contra* Johne Creichtoun, 1 *t. c.* 199.

C. XXVIII. A pupill may perſew in judgment beand authorizit be his father allanerlie.

ANE pupill or minor being fortifyit and authoriſit be his father, perſonallie preſent in judgment, as guydar, governour and tutor to his ſone be the law, may perſew or defend ony actioun pertening to him, notwithſtanding that it be objectit that he may not do the ſamin, he beand ane pupill, without the authoritie or conſent of ane tutor or curator; ſeing na mentioun is maid in the ſummondis or clame of ather of thame. 9 *Feb.* 1545, Johne Flemynge *contra* Johne Dickſone.

C. XXIX. A debtor quha hes maid payment to the tutor, may not thairefter be perſewit be the pupill.

PAYMENT beand maid to the tutor, within the time of tutorie, of debtis, maillis, fermis and dewteis awand to the pupill, the pupill thairefter cumand to perfyte age, hes na actioun to perſew the debtour, quha maid payment in maner foirſaid. 20 *Julij*, 1540, 1 *t. c.* 1046.

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C. XXX. Of a tutor ſummonit completand his office befoir the compeirance.

GIF ony minor havand ane tutor be ſummonit be ony man, and efter the time of the executioun, and befoir the day of compeirance, he happin to complete the time of tutorie, and cheiſis curatouris, the ſaid executioun maid aganis him and his tutor is not ſufficient, and thairfoir the ſaid minor and his curatouris aucht to be ſummonit of new agane. 1 *Junij*, 1554, 1 *t. c.* 1169.

C. XXXI. How intimation ſould be maid to a pupill.

INTIMATIOUN of ony richt or title quhilk aucht and ſould be maid to a pupill and minor, is ſufficient and lauchfull, gif the ſamin be maid to his father as lauchfull adminiſtrator, or to his tutoris and curatouris. *Ult. Feb.* 1566, *the Quenis Advocate* contra *the Laird of* Coldenknowis, 1 *t. c.* 1349.

C. XXXII. A minor may not perſew in judgment without conſent of his tutoris or curatouris.

ANE minor beand within xxi. zeiris of age, and havand tutoris and curatouris, may not perſew in judgment without thame; becauſe he has not perſoun to ſtand in judgment without he be authorizit be thame, 6 *April.* 1549. 7 *Novemb.* 1553, *the Laird of* Chirnſyde *contra* Innerleyth, 1 *t. c.* 1103. Bot the King, beand furth of tutorie, may perſew in judgment ony actioun or cauſe aganis ony of his liegis, at his inſtance, without conſent of ony curatouris, 2 *Octob.* 1554, *the Quenis Advocate* contra *M.* Tho Marjoribankis, 2 *t. c.* 354. And ſiclike, all ſentences and decreitis gevin aganis ony minor havand tutoris or curatouris, and thay not ſummonit in the cauſe, is of nane availl, and aucht and ſould be reducit. 28 *Julij*, 1582, 1 *t. c.* 1154.

C. XXXIII. All tutoris and curatoris ſould mak compt and rekning.

ALL tutoris, als weill teſtamentaris as utheris, and all curatouris, aucht and ſould at the end and iſche of thair office and adminiſtratioun, give and mak befoir ane Judge ordinar, juſt rekoning, compleit ſatisfactioun and payment to him to quhome thay war tutoris or curatoris, and to ſum of his ſpeciall freindis, of all and ſindrie gudis, geir, maillis, graſſummis, annuelrentis, bandis, ſowmis of money, inſicht gudis, bairnis part of geir, and airſchip gudis, with all and ſindrie commoditeis and proffeitis thairof, and utheris pertening to him, and intromettit with, tane up and reſſavit be thame, as tutoris or curatoris, of all zeiris and termis, dayis and times of thair adminiſtratioun and office: And to that effect the time that thay ar conſtitute tutoris or curatoris, thay aucht and ſould find cautioun for juſt adminiſtratioun, induring the time of thair office, and for juſt compt and rekning in maner foirſaid. 1 *Decemb.* 1522, *M.* Johne Boſwell *fand* James Logane *Jovertie.* 25 *Nov.* 1505, Johne Grahame *contra Sir* James Scrymgeour *Conſtable of* Dundie, 1 *t. c.* 226.

C. XXXIV. The pupill ſould ſatisfie the tutor for his deburſementis and ſuper-expenſis.

GIF ony tutor deburſe and pay of his awin proper gudis, induring the time of his tutorie, to the utilitie and proffeit of his pupill, or to the confirmatioun or reparatioun of his houſis, or heritage, as in redeming of wodſet landis pertening to the pupill; the pupill being furth of tutorie, or within the age of tutorie, and under ane uther tutor, aucht and ſould reſtore and deliver the ſamin to his tutor. 6 *Decemb.* 1528. Alexander Foreſtare *of* Coſtorphine *contra* Williame Foreſtar *his tutor*, 1 *t. c.* 349.

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C. XXXV. The pupill hes actioun aganis his tutoris cautioner.

GIF ony perſoun be bund and obliſt as ſovertie for ony tutor, for faithfull adminiſtratioun in his office, and for compt and rekning to be gevin be him of his intromiſſioun; the pupill, at his perfyte age, hes gude title and actioun to perſew the ſovertie for recoverie and redreſs of all ſic thingis, in the quhilk he hes bene damnifyit be his tutor during his tutorie. 27 *Junij*, 1538, 1 *t. c.* 1036.

C. XXXVI. The time at the quhilk tutorie endis.

TUTORIE teſtamentar, lauchfull or dative, endis and expyris quhen the pupill, beand male, is of xiiij. zeiris compleit, and beand female, of xij. zeiris: And thairfoir, gif the tutor be callit, as tutor, in ony cauſe, and he alledge and prove that the pupill is paſt the age of xiiij. or xij. zeiris, he ſould not be compellit to anſwer as tutor thairanent. 15 *April.* 1533. 13 *Decemb.* 1547, 1 *t. c.* 1008. And the time of tutorie being endit and expyrit, the pupill, male or female, is at his awin fré will and libertie to paſſe quhair he pleſis: And gif the tutor thairefter haldis and detenis him, his narreſt kinniſmen hes juſt richt and title to cauſe him be put to libertie. 2 *Decemb.* 1561, James Kincaid *contra* Johne Logane *of* Cotefeild, *tutor to* James Kincaid *of* Brochtoun, 1 *t. c.* 1265.

Anent curatouris.

C. I. Quha may cheis curatouris.

ANE minor being male, efter the compleit age of xiiij. zeiris, may cheis curatouris, and being within the ſaid age and zeiris, hes na powar to cheis the ſamin, as being zit within tutorie: And gif it happin, at the cheſing and electing of the ſaidis curatouris, to be alledgit and objectit, that the ſaid minor hes na powar to cheis curatouris, be reſſoun he is within the ſaid age; and it be replyit be him, or ony in his name, that he hes paſt and compleitlie fulfillit the ſaid age, the ſamin reply ſall be admittit to his probation; *quia majorem ætatem alleganti incumbit probatio*, 12 *Decemb.* 1566, Geo. Touris *contra* Magnus Touris, 1 *t. c.* 895. *Item*, Ane woman, being of the age of twelf zeiris compleit, may cheis and elect curatouris, be quhome hir gudis and geir may be governit and reulit, untill ſcho be of the age of xxi. zeiris compleit. 13 *Feb.* 1553. *Pen. Feb.* 1553, Gorthie *contra Lord* Methven, 1 *t. c.* 1167.

C. II. Anent the ordour for geving of curatouris to minoris.

ITEM, Becauſe it is underſtand, that be the geving of curatouris to minoris be ſindrie Jugeis, thair hes bene greit ſkaith ſuſtenit be the ſaidis minoris: Thairfoir it is ſtatute and ordanit, that in all times cuming, quhen ony minor paſſis the zeiris of his tutorie, and deſyris curatouris, that he cum befoir his Judge ordinar, and deſyre of him a ſummoundis, or edict, to warne twa at the leiſt of the maiſt honeſt and famous of the minoris kin, and all utheris havand interes, quhilk ſall be warnit lauchfullie; that is to ſay, the ſpeciall perſounis perſonallie, or at thair dwelling places, gevand ane copie to thair wifis or ſervandis, or affixand it on thair zettis or duris, and utheris haifand interes, generallie, at the mercat croce of the heid burgh of the ſchire quhair the ſaidis minouris hes thair landis or gudis, to compeir at a certane day, upon nine dayis warning at the

leiſt, to heir and ſé the curatouris deſyrit be the ſaid minor, to be gevin to him, unto his perfite age of xxi zeiris, and cautioun fundin *de fideli adminiſtratione*; quhilkis beand gevin in maner foirſaid, thay ſall not be revokit nor diſchargit, nor utheris choſin to the minor, unto the time thay be callit befoir the Lordis of counſall, or utheris Jugeis ordinar, at the will of the bairn, to heir and ſé thame diſchargit and revokit for reſſonabill cauſis: Quhilkis being fundin of veritie, thay than to be diſchargit, and utheris curatouris gevin in thair placis be the ordour foirſaid, with cautioun, and na utherwayis. *Ma. R. fol.* 160, *act.* 6. 20 *Junij*, 1555.

C. III. Curatouris *ad lites.*

ANE minor perſeward ony actioun, not havand curatouris, may deſire in judgment, and at the bar, curatouris to be gevin to him *ad lites*, and thair namis to be inſert with him for thair interes in the ſummoundis, and proces, albeit the ſamin ſummoundis be not intentit in thair namis for thair interes. 2 *April.* 1563, Robert Grahame *contra the Laird of* Drylaw, 1 *t. c.* 1298.

C. IV. Curatouris ſould mak faith, and find cautioun.

CURATOURIS beand lauchfullie choſin be ony minor, ſould give thair aith befoir a Judge, the time of thair electioun, of leill and trew adminiſtratioun in thair office; and forder, thay ſould find cautioun for the ſamin effect, gif the minor be furth of the realme. *Pen. April.* 1550. 2 *Maij*, 1559. Euphame Balfour *and hir dochteris.* 21 *Feb.* 1559, Marion *and* James Henryſonis, 1 *t. c.* 1115.

C. V. Ane curatour may be cautioun for his collegue.

DIVERS and ſindrie curatouris beand gevin to ane minor, ilk ane of thame may be cautioun and ſovertie for utheris for faithfull adminiſtratioun in thair office, and for juſt compt and rekning to be gevin to thame at the end thairof. 29 *Feb.* 1558, Mathou Lillie *contra* N. Forret, 1 *t. c.* 1224.

C. VI. A woman may be curatrix.

ANE woman may be gevin be a Judge, curatrix to hir awin bairn, ſpeciallie *ad negotia*, and not *ad lites*, ſcho findand cautioun for compt and rekning, and makand faith for leill and trew adminiſtratioun in hir office, *Pen. April.* 1550. 2 *Maij*, 1559. Euphame Balfour *and hir dochteris.* 11 *Feb.* 1559. Marion *and* James Henryſonis, 1 *t. c.* 1115. And it is to wit, that the mother may be choſin and electit to be curatrix to hir awin bairn, quhidder ſcho wes choſin tutrix teſtamentar or not. *Pen. April.* 1550, Agnes Johnſtoun *contra* James Johnſtoun *hir ſone.* 12 *Junij*, 1543, 1 *t. c.* 689.

C. VII. A curatour ſould be gevin to ane fool or idiot.

GIF ony perſoun havand landis, gudis and geir pertening to him, be alledgit to be ane fool and natural idiot, deif and dumb, or furious, and not of richt judgment, ſwa that it be feirit that he annalzie or put away his gudis moveabill or unmoveabill, the Kingis breif, at the deſire of his freindis and kinniſmen, may be direct furth of the chancellarie to the Schiref, or ony utheris his Officiaris, within quhais juriſdictioun the ſaidis landis or gudis lyis, to tak knawlege and inquiſitioun heiranent be a condigne aſſiſe and inqueiſt: And gif the perſounis of the ſaid inqueiſt retour to the Kingis chapell *affirmative*, conforme to the pointis of the ſaid breif; the King may give to twa or thré of the ſaidis idiotis kin-

kinniſmen, ſum thairof ſib to him on the motheris ſide, and ſum on the fatheris ſide, to be his curatouris; the quhilk to be men of judgment, diſcretioun and lauchfull age, meit and ſufficient for ſic rule and adminiſtratioun; and zit on na wayis ſould the narreſt and lauchfull airis to the ſaid idiot, gif he happin to deceis without airis of his bodie, be deprivit of thair richt of ſucceſſioun: The quhilkis curatouris aucht and ſould, befoir the ſaidis Jugeis ordinar, find ſufficient cautioun that the gudis and geir pertening to the ſaid idiot ſall be furtheumand; that thay ſall do that quhilk is proffitabill, and eſchew all thingis unproffitabill to him; that thay ſall leillelie and trewlie keip his perſoun, gudis and geir, to his profite and utilitie; that thay ſall mak ane faithful inventare of his gudis and geir, and ſall give compt and rekning of thair adminiſtratioun at the iſchie and end of the ſamin. 14 *Januar.* 1505, *the King* contra Archibald Levingſtoun. 17 *Feb.* 1523, Patrik Hepburne *contra* Johne Hepburne, 1 *t. c.* 248. [The narreſt agnates ſould be curatouris to foolis, idiotis, and furious perſounis. *Ja.* VI. *act. parl.* 10 *Decemb.* 1585.]

C. VIII. He that is curatour to a fool ſould have his bodie in keiping.

HE that is maid and conſtitute under the quarter ſeill, (as uſe is commounlie) to be curatour, guyder and governour to ane perſoun, as unnatural, daft, and idiot, hes powar be vertue of his office, to have and retene in his keiping the ſaid idiotis perſoun, and to intromet with his landis, poſſeſſiounis and gudis during the time of the ſaid idiotrie, and to uſe the ſamin as he thinkis expedient, and heirfra to exclude all uther curatouris and governouris gevin and grantit to the ſaid idiot be his father, befoir the time of his deceis. 15 *Maij*, 1547, *M.* Robert Wynrhame *contra* Robert Gibſone, 1 *t. c.* 652.

C. IX. Anent the geving of a curatour *ad lites* to a fool and idiot.

GIF ony man havand ane actioun to be intentit aganis ane uther, and efter the intenting thairof, or during the dependence of the ſamin, happin to becum furious, or utherwayis imperfyte, that he nather may nor can underſtand his awin weill and evill, nor zit uſe the lauchfull adminiſtratioun of his awin buſines, ather in proces, or anent his landis, gudis, heritage, and actiounis; his wife, gif he ony hes, or narreſt kinniſman, may ask curatouris, *tam ad lites, quam ad negotia*, to be gevin to him be the ordinar Judge to be his adminiſtratouris, during the time of his furie or imperfectioun, to the effect that his gudis, moveabill or unmoveabill, actiounis nor proces, incur na danger nor ſkaith throw his imperfectioun, and inlaik of ſufficient curatouris. 1 *Maij*, 1568, Margaret Craufurd *contra* Johne Mure *and utheris*, 1 *t. c.* 912.

C. X. A fool or idiot may not mak ony contract, without conſent of his curatouris.

ALL contractis, obligatiounis, infeftmentis or decretis arbitrall, maid be ony man, or gevin betwix twa parties, of the quhilkis ony ane is *furioſus*, or *mente captus*, is of nane availl, and ſould be reducit as maid be ane perſoun, *cui ipſo jure eſt interdictum*, and quha, at the making of the ſaid obligatioun, or geving of the ſaid decreit arbitrall, could not give conſent to the geving or making thairof without curatouris, quhilkis he aucht and ſould have had, being in that eſtait, 22 *Mart.* 1551, *Laird* Torrie *elder*, contra *Laird* Torrie *zounger*: And gif he (havand curatouris gevin to him) hes ony

ony actis, contractis, or deidis done be himself, without thair advise, consent or authoritie, the samin ar of nane availl, and sould be reducit, and the probatioun thairof sould be referrit to the persewar, to prove that the maker was *furiosus, vel incompos mentis.* 14 *Decemb.* 1537, 1 *t. c.* 708.

C. XI. At quhat time the office of a curatour gevin to a fool or idiot, ceisis and expiris.

ANE curatour beand gevin be ane Judge to a furious or lunatique persoun, or havand ony uther siclike infirmitie; gif thairefter it sall happin the said persoun to convalesce of the said infirmitie, and recover his former health, for the want quhairof he was under curatorie, he may call and persew his said curatour to heir and sé him be dischargit of his office, and the full administratioun, reule and governament of his awin persoun, his landis and gudis, to be restorit agane to him, sa lang with him to remane as he remanis in haill and gude mind: Provyding alwayis, that in cais it sall happin him to be visited agane with seiknes and infirmitie, as he was befoir; then, and in that cais, the said curatour sall use agane and exerce his said office of curatorie of the said infirm persoun his landis and gudis, efter the forme of the gift of curatorie maid to him of befoir. 13 *Junij*, 1487, Quintene Agnew *contra* Uthride Macdougall *of* Garthland, 1 *t. c.* 35.

C. XII. *Curator non potest esse author in rem suam.*

THE sone beand minor, and havand contractis or uther busines to be performit for his proffeit and weill, betwix him and his father, the quhilk cannot be done without curatouris, he may desire befoir ane Judge, curatouris to be gevin to him, ane or ma, to that effect; becausе the father, albeit he be curatour be the law to his sone, zit, beand partie, may not be curatour *in rem suam.* 26 *Julij*, 1564, Archibald Makneill, *and* James Makneill *his father*, 1 *t. c.* 1258. 3 *Junij*, 1561, *the Maister of* Cathnes *contra the Erle of* Cathnes.

C. XIII. Contract maid be a minor, without consent of his tutoris or curatouris, is null.

CONTRACT or obligatioun beand maid be ony minor, without consent of his curatouris, he havand tutoris and curatouris at the time of the making thairof, sould not be registrat, nor ressave ony executioun aganis him, and the minor may justlie alledge, he beand summonit to heir and sé the samin registrat, that the samin aucht not to be registrat, be ressoun it was not maid be authoritie of his tutoris or curatouris, he beand then within the age of xxi. zeiris. 1 *Decemb.* 1569, Robert Bruce *contra* Williame Bruce, 1 *t. c.* 897.

C. XIV. The curatour sould have the keiping of the fortalice pertening to the minor.

THE tour and fortalice pertenand to ane minor, quhilk was in the handis and keiping of his tutor during the time of tutorie, efter the ische and end thairof, sould be deliverit in keiping to the minor and his curatouris, to be keipit be thame to his behove indu-ring the time of the curatorie. 5 *Julij*, 1553, 1 *t. c.* 1150.

C. XV. The curator may intromet with the proffeit of the minoris landis.

SA lang as the minor is on life, and seisit in the landis pertening to him, he being absent and furth of the realme, his curatour may intromet with and uptak the maillis and dewteis of his landis. 22 *Mart.* 1560, Creichtoun *contra* Creichtoun, 1 *t. c.* 1257.

C. XVI. Curatouris may be removit.

CURATOURIS beand chosin befoir ane Judge, and gevin to ane minor,

minor, and thairefter waſtand or deſtroyand the minoris landis, gudis and geir, or ſufferand the ſamin negligentlie to periſh or decay, to his heavie hurt and ſkaith, may be callit and perſewit be the minor at ony time befoir the iſche and out-ryning of thair office of curatorie, or thairefter, for the damnage and ſkaith ſuſtenit be him thairthrow: Bot gif he wald perſew thame befoir his perfyte age of xxi zeiris, he may not, without the aſſiſtance of uther curatouris, be reſſoun of his non-age: Thairfoir he may call thame befoir a Judge, to ſé thame revokit and removit fra all farther adminiſtratioun, for the cauſe foirſaid; and the ſamin beand ſufficientlie provin, he may revoke the ſaid curatouris choſin be him of befoir, and befoir the Judge may chooſe and elect utheris curatouris in thair places, for guyding and reuling of him be thair counſall, aſſiſtance, and defence, in quhatſumever his actiounis and buſines, untill his perfyte age of xxi. zeiris. *Ult. Julij*, 1564, George Heriot *contra* Andro Libertoun *and* Williame Thomſon *his curatouris*, 1 *t. c.* 827.

C. XVII. At quhat time curatorie endis.

CURATOURIS gevin to ane minor, male or female, *ad lites & negotia*, induris and are irrevocabill untill the minor be of xxi. zeiris compleit, (except in the caiſſis foirſaidis) quhidder the ſaid minor be male or female, 22 *Mart.* 1545, 1 *t. c.* 1089. Attour, ane woman beand minor, and havand curatouris, may be callit and perſewit without thame, gif ſcho be cled with ane husband; becauſe quhen ony woman havand curatouris maryis, the office of hir curatouris expyris, and ſcho is under the powar of hir huſband during his lifetime; and thairfoir in ſic caiſſis it is ſufficient to ſummound hir, and hir huſband for his intereſſe. 19 *Feb.* 1564, Edward Sinclair *contra* William Sinclair.

Of ſuperiouris and vaſſallis.

C. I. The tenent ſould help his over-lord in making of his eldeſt ſone ane Knicht, or in the marying of his eldeſt dochter,

IT is leaſum to the ſuperiour, or over-lord, to ask ony reſſonabill help or ſubſidie fra his tenent, gif his ſone and appeirand air be to be maid ane Knicht, or gif he is to marie his eldeſt dochter with ony man, *Lib.* 2. *c.* 73. And it is to wit, that the over-lord may not aſk and rais the ſaid help and ſubſidie fra his tenent, to mak his eldeſt ſone ane Knicht, befoir his ſone be of the age of fiftene zeiris, *Leg. Foreſt. c.* 85. Bot the over-lord, for mantening his weir, or for conſervatioun or keiping of his landis, or for marying of his ſecund or efter-born dochter, may not diſtrinzie nor compell his tenentis nor men to aſſiſt or help him thairto, bot at thair awin will and pleſour allanerlie, *Lib.* 2. *c.* 73. Attour, gif it happin the father to deceis, efter he hes tane and reſſavit help of his tenentis, for the mariage of his dochter, ſcho as zit not beand maryit the time of his deceis, his executouris ar bund and obliſt to hir for all ſowmis of money reſſavit be hir father, in name of help and ſubſidie, befoir his deceis: And gif hir fatheris moveabill gudis and geir be not ſufficient for payment thairof, his air is bund and obliſt to the ſaid dochter for the reſidue of the ſaidis ſowmis. *Leg. Foreſt.* *c.* 85.

C. II. The ſub-tenent ſould help the tenent to pay the releif to the over-lord.

EFTER that the over-lord is appointit and aggreit with his tenent, anent the releif of his landis to be gevin to him, it is leafum to the tenent to ask and require, fra his men and tenentis, ane reſſonabill help and ſupplie, efter the facultie and quantitie of thair landis, not greivand nor troubland thame over ſair thairanent, abone thair ſtrenth; for the ſub-tenentis ſould help, as thay gudlie may, thair immediat over-lord, in making payment of his releif to his ſuperiour. *Lib.* 2. *c.* 72.

C. III. The modificatioun of the ſubſidies askit be the ſuperiour fra his vaſſall.

IN asking and raiſing the helpis and ſubſidies abone ſpecifyit, this form and ordour ſould be keipit, *viz.* Of ane haill fie pertening to the tenent, and haldin be ſervice of ward and releif, the over-lord may ask xx *s.* allanerlie, that is to ſay, of ilk five pund land xx *s.* And gif he hes les land, he ſall pay les, efter the quantitie and rate of his landis or tenement, *Leg. Foreſt. c.* 85.

C. IV. The over-lord may poind his tenent for the ſubſidie, releaſe or ſervice aucht to him.

THE over-lord may diſtrinzie, conform to the reſſonabill conſuetude of his court, and without the Kingis letteris, his tenentis, or menis moveabill gudis, and cattell beand within his awin boundis and juriſdictioun, for ſic help as his tenent or man ſould do to him be law and reſſoun: And thairfoir, gif the over-lord may poind and diſtrinzie his tenent for the ſervice aucht to him, or gif his Juſtice help him thairanent, he may alſo and rather diſtrinzie thame for the releif, and for ſervice aucht be thame to him for his landis: And gif ony ovir-lord is not of ſufficient ſtrenth and powar to diſtrinzie or juſtifie his tenent for the ſervice aucht to him, the King, or his Juſtice, ſall help him thairanent, and ſall cauſe his tenent, without delay, do to him all juſt ſervice and richt, uſit and wont, for the landis or tenement quhilk he haldis of his over-lord. *Lib.* 2. *c.* 73.

C. V. The mutuall ligue and band betwix the ovir-lord and his vaſſall.

THE Lord and the vaſſall ar bund and obliſt *hinc inde* to utheris: For how far the tenent is bund be reſſoun of homage to his ſuperiour, ſa far is the ſuperiour obliſt to his tenent be virtue of his ſuperioritie, except anent honour and reverence allanerlie, the quhilk the tenent aucht and ſould give and exhibite to his ſuperiour, albeit the ſuperiour is na wayis bund to give the ſamin to his tenent, *Lib.* 2. *c.* 68. *De judic. c.* 135. And thairfoir, gif the ſuperiour perſew or accuſe his tenent or vaſſall criminallie, or of his life in judgment, for ony crime or cauſe, quhairof the tenent is clengit and maid quyte, he tynes and foirfaltis his ſuperioritie of all and haill the landis haldin of him be the ſaid tenant; becauſe the ſuperiour ſould defend his vaſſall, als weill as the tenent ſould ſerve his ſuperiour. And gif the ſuperiour, be way of deid, perſew or invade his vaſſall, for his ſlauchter, or harme of his bodie, in like maner he tynes his ſuperioritie of the ſaidis landis; *quia quantum debet ſervus domino ex ſervitio, tantum debet dominus ſervo ex dominio.* 19 *Mart.* 1532, 1 *t. c.* 412.

C. VI. How the over-lord may accuſe his tenant, and how the tenent may purge him.

NA Lord may prove in his awin court aganis his awin man or tenent, or convict or condemne him for ony tranſgreſſioun alledgit done be him to his Lord, bot gif it be ane oppin and manifeſt treſpas, quhilk requiris na pruif; nor zit may he prove onie pactioun or covenant aganis him with witneſſis, gif his foirſaid man or tenent of-

offeris him readie to acquite him anent all ſic thingis laid to his charge be his Lord, *quia in hoc caſu incumbit tenenti probatio*; and the man or tenent aucht to mak his purgatioun aganis his Lord, with himſelf and twelf men, beand unſuſpectit, *Quon. attach. c.* 15. *Mod. ten. cur. c.* 24. And gif ony man ſould purge him lauchfullie aganis the King of ony thing laid to his charge, he ſould mak his purgatioun with himſelf and xxiiij. of his Peris, *i. e.* of ſic eſtait and conditioun as he himſelf is, and with na gif he pleaſis, bot not with fewer: And aganis ony uther partie he may acquyte him with five perſounis unſuſpectit and of gude fame, and himſelf the ſaxt, *Quon. attach. c.* 15. *Mod. ten. cur. c.* 38. *De maritag. c.* 5. And gif thair be ony Lord quhilk hes of his tenant ony inſtrument or writ ſeillit with his ſeill, tuiching ony landis or uther thing, he may uſe the ſamin writ lauchfullie in his awin court, be way of probatioun, aganis his tenent; for na acquittance or probatioun be witneſſis hes place, or ſould be admittit aganis ony inſtrument or writ. *Quon. attach. c.* 15. *Mod. ten. cur. c.* 35. *De maritag. c.* 5.

C. VII. The ſuperioritie of landis haldin of Frieris or Nunnis pertenis to the King.

ITEM, Forſamekle as thair ar divers liegis and ſubjectis of this realme, quhilkis hes ſindrie landis, rowmis and poſſeſſiounis obtenit be thame, or thair predeceſſouris, in few and heritage, of the Priouris or Prioureſſis motheris, and conventis of ſindrie Frieris and Nunnis places within this realme, haldin of thame and thair ſucceſſouris; and now, ſen the reformatioun of religioun, the ſaidis ſuperiouris ar for the maiſt part deceiſſit, and na utheris placit nor to be placit in thair rowmis, ſwa that within ſchort ſpace thay ſall all decay, quhairthrow the airis of the ſaidis fewaris, and utheris heritabill tenentis of the ſaidis places ſall get na entrie to thair landis and heritage haldin of Frieris and Nunnis: For remeid thairof, it is ſtatute and ordanit in this preſent parliament, that all perſounis, fewaris, or heritabill tenentis of ſic Frieris and Nunnis places, and thair airis, efter the deceis, decay or inlaik of thair ſaid ſuperiouris, hald, and ſall hald, thair fewis and tenandreis of the ſamin, of our ſoverane Lord and his ſucceſſouris, in all tymes cuming, ſiclike, and als frelie, as thay held the ſamin of the places foirſaidis, Priouris, Prioreſſis, or utheris being thairin for the time: And the fewmaillis, ſervices and dewteis ſpecifyit and contenit in thair infeftmentis, to pertene to our ſoverane Lord and his ſucceſſouris, to be intromettit with, uptakin and diſponit at thair pleaſour: And that the airis of the ſaidis fewaris and heritabill tenentis foirſaidis, ſall enter to thair fewis and tenandreis be brevis of our ſoverane Lordis chapell, ſiclike, and als frelie, and in the ſamin maner, as the fewaris and heritabill tenentis of our ſoverane Lordis propertie in all tymes cuming. *Ja.* VI. *fol.* 2. *act.* 5. 28 *Aug.* 1571.

C. VIII. The forme of his aith quha haldis of a Baron.

ALL tenentis and vaſſallis, haldand landis of ane Baron, ſould ſwear fidelitie in the time of thair entres, that thay ſall be leill fealis to him and his airis; ſall give him faithfull counſall efter thair knawlege gevin to thame be God, and ſall conceill his counſall, and give the ferme and dewtie of thair landis to him without ony diminutioun at the termis appointit: And the Baron ſall hald the tenentis

nentis handis betwix his awin twa handis the time of the ſamin aith. *Stat. gild. c.* 48.

C. IX. How the tenent ſall anſwer to his Lord upon his heritage.

BE the law of this realme na fré tenent aucht to anſwer in his Lordis court, upon ony thing tuiching his fie and heritage, without the Kingis letteris, ſpeciallie gif the pley or contraverſie be concerning temporall heritage. *Lib.* 2. *c.* 22. *Quon. attach. c.* 16. *Mod. ten. cur. c.* 34. *Leg. burg. c.* 6.

C. X. Of him that hes divers over-lordis.

ITEM, Gif ony vaſſall hes divers and ſindrie over-lordis, with divers landis haldin of thame in cheif, the quhilkis hes deadlie feed ilk ane aganis uther, ſwa that the ane ſeikis the death or ſlauchter of the uther; the tenent or vaſſall, being chargit or requirit thairto, ſould paſs in proper perſoun with his cheif and principall over-lord aganis his uther over-lord; for in this it behoves him to obey the maiſt principall and eldeſt over-lord; and zit nevertheles, he ſould do to the uther ſic ſervice as he is bund and obliſt to do for the landis haldin of him. *Lib.* 2. *c.* 63. *De judic. c.* 133.

C. XI. The over-lord and vaſſallis dewtie and office.

THE vaſſall, be reſſoun of his faith and homage maid be him, is bund and obliſt not to moleſt, trouble, nor inquiet his over-lord, for doing ony thing aganis him; for thairin he brekkis his aith of homage; except it be in his awin defence, or at the Kingis command, or quhen he is chargit to paſs with his Grace in weirfar aganis his Lord: And generallie, the tenent brekkis the faith of his homage maid to his ſuperiour, gif he dois ony thing aganis him tuiching or tending to his diſheriſhing, or to the harm and hurt of his body, or to his lak and ſchame, *Lib.* 2. *c.* 62. And gif the tenent do ony thing concerning the diſheriſhing of his Lord, utherwayis than as ſaid is, and is convict thairof, he and his airis tynis and foirfaltis all landis haldin of him in cheif: And the like is to be underſtand, gif he put violent handis in his Lordis bodie, hurtand him, or doand him ony uther injurie or harme; or gif the tenent in the Kingis court deny him to be his over-lord, or ſuperiour of his landis, and, be ſufficient probatioun led and deducit aganis him in judgment, is convict thairanent. And it is to wit, that the over-lord may compell his awin tenent or vaſſall to cum to his awin court, and thair, be dome thairof, may judge and juſtifie him anent the foirſaidis treſpaſſis and felonie, without the Kingis letteris, or letteris of his Graceis Juſtice-generall. And gif the tenent may purge himſelf heiranent, with himſelf and other four, he ſould be aſſoilzeit and maid quyte: Bot gif he may not mak the ſamin acquittance, at the conſideratioun of the court, he may tine and foirfault his landis and heritage at his Lordis will and pleaſour. *Lib.* 2. *c.* 64. *Quon. attach. c.* 86. *De judic. c.* 134.

C. XII. The tenent may be compellit to do ſervice uſit and wont to his maſter.

GIF the tenent or vaſſall refuſis to do his ſuperiour ſic ſervice as he is juſtlie auchtand to him, it is leafum to the ſuperiour, without the Kingis or his Juſticis precept, to charge the ſaid tenent to cum to his awin court, thair to anſwer anent the doing and paying of the ſaid ſervice: And gif the tenent be ſufficiently convict heirintill, *viz.* be ane greit aſſiſe of his Peeris, quha ſaw him and his predeceſſouris do and pay ſic ſervice to the ſamin Lord, or his predeceſſouris;

ſouris; in this cais he ſall foirfault and tine all the landis and heritage quhilk he haldis in cheif of the ſaid ſuperiour, *Quon. attach. c.* 87. *Lib.* 2. *c.* 64. *De judic. c.* 134. And gif the ſuperiour is not of ſufficient powar and ſtrenth to judge and juſtifie his tenent for the ariage of his ſervice, he may, gif he pleaſe, have recourſe to the Kingis court, and ſeik help thairanent: And ſiclike, gif the tenent alledge that he nor his predeceſſouris is not bund nor obliſt to pay or do ony ſic ſervice as is acclamit, he may ſeik, gif he pleaſe, and obtene the Kingis letteris, to the effect that he be on na wayis troublit and vexit unjuſtlie for ony ſervice. *Lib.* 2. *c.* 64. *De jud. c.* 134.

C. XIII. The tenent quha dois ſervice to the Lady tiercear, not obliſt thairfoir to the proprietar.

ITEM, Gif ony frehalderis landis or heritage, being fré fra all ſervice be virtue of his infeftment, fallis in tierce pertening to ane Lady tiercear; and gif the frehalder willinglie, or uncompellit, dois ony ſervice to the ſamin Lady, as in cuming to hir court, or doing ony ſic thing in hir lifetime; efter hir deceis, quhen the tierce returnis to the proprietar thairof, and is conſolidat with the twa part, the ſaid proprietar may not ask nor clame ony ſic ſervice as was done to the ſaid umquhile Lady tiercear be his foirſaid tenent or frehalder; becauſe the ſaid tenent is not bund nor obliſt to do the ſamin be virtue of his infeftment, nor zit the ſaid Lord and proprietar was not lauchfullie ſeaſit at ony time thairintill, nor in lauchfull poſſeſſioun thairof. *Quon. attach. c.* 6. *Mod. ten. cur. c.* 28.

Anent beggaris.

C. I. Of the reuling of beggaris.

THE King hes ſtatute, be conſent of the haill parliament, ripelie aviſit, that na thiggaris be tholit to beg, nouther to burgh nor to landwart, betwix fourtene and threſcoir ten zeiris, bot thay be ſene be the counſall of the townis, or of the land, that thay may not win thair leving utherwayis: And thay that ſall be tholit to beg, ſall have ane certane takin on thame, to landwart of the Schiref; and in the burrowis thay ſall have takin of the Alderman or of the Baillies: And all utheris perſounis havand na takinnis, nouther of land, na of burgh, ſall be chargit be opin proclamatioun, to labour and paſs to craftis, for winning of thair living, under the pane of birning on the cheik, and baniſhing of the countrie, *Ja.* I. *fol.* 5. *c.* 27. 26 *Maij*, 1424. And that to be done be the Schiref to land, and be the Alderman and Baillies to burgh, *Ja.* II. *fol.* 42. *act.* 81. 6 *Mart.* 1457. And that in everie burgh out-throw the realme, the Chalmerlane ſall inquire in his aire zeirlie, gif the Alderman and Baillies hes keipit the act and the forme of the ſtatute; and gif thay have brokin it, thay ſall be in fiftie ſchillingis to the King. *Item*, The Schireffis failzeing in keiping of the ſaid act, to be puniſt in like wayis, *Ja.* I. *fol.* 7. *c.* 46. 12 *Mart.* 1424. *Item*, Anent beggaris, that the ſtatute of King *James* the firſt maid upon ſtark beggaris be obſervit and keipit; and that the Schireffis, Proveſtis, Baillies within burrowis, baith of rialtie and regalitie, ſpiritualitie and temporalitie, ſee that this act be execute and keipit; and that thay thole nane to beg within thame except crukit folk, ſeik folk,

impotent folk, and waik folk, under the pane of payment of ane merk for ilk uther beggar that beis fundin. *Ja.* IV. *fol.* 104. *c.* 104. 11 *Mart.* 1503. *Ja.* I. *fol.* 18. *c.* 114. 1 *Mart.* 1427.

C. II. Anent the ſtanching of of ſturdie beggaris.

ITEM, For refraning of the multitude of maiſterfull and ſtrang beggaris, it is ordanit, that the act maid thairupon of befoir, be King *James* the firſt, apprevit and ratifyit be utheris our ſoverane Lordis predeceſſouris, be obſervit, keipit, and put to ſcharp execution in all punctis, with this additioun, That na beggaris be tholit to beg in ane parochin that ar born in ane uther; and that the heidiſmen of ilk parochin mak takinnis, and give to the beggaris thairof, and that thay be ſuſtenit within the boundis of that parochin; and that nane utheris be ſervit with almons within that parochin bot thay that beris that takin allanerlie, under the panis contenit in the ſaid act: And that the Juſtice-clerk mak inquiſitioun, and tak dittay heirupon at everie juſtice air. And als ordanis letteris to be direct, to command and charge the Proveſt and Baillies of *Edinburgh*, and all utheris Proveſtis, Baillies of burrowis, Schireffis, and uther Officiaris of the Kingis, to put this act to executioun in all punctis; and the ſamin to be publiſt at all places neidfull, ſwa that nane ſall pretend ignorance, or alledge thay knew not the ſamin, in time to cum. *Ja.* V. *fol.* 121. *act.* 24. 7 *Junij*, 1535, *Mar. R. fol.* 5. 1 *Feb.* 1551. *Mar. R. fol.* 168. *act.* 38. 20 *Junij*, 1555.

C. III. Anent lipper folk.

ITEM, That na lipper folk, nouther man nor woman, enter na cum in a burgh of the realme bot thriſe in the oulk, that is to ſay, ilk *Monounday*, *Wedneſday* and *Friday*, fra ten houris to twa eſternoon; and quhair fairis and mercattis fallis in thay dayis, that thay leif thair entrie in the burrowis, and gang on the morn to get thair leving. *Item*, That na lipper folk ſit to thig, nather in kirk na in kirk zaird, na uther place within the burrowis, bot at thair awin hoſpitall, and at the port of the town, and at uther placis outwith the burrowis. *Item*, That the Biſchopis, Officiallis and Denis inquire diligentlie, in thair viſitatioun of ilk paroche kirk, gif ony be ſmittit with lipper; and gif ony ſic be fundin, that thay be deliverit to the King, gif thay be Secularis; and gif thay be Clerkis, to thair Biſchopis: And that the burgeſſis gar keip this ſtatute under the pane contenit in the ſtatute of beggaris: And quhat lipperous that keipis not this ſtatute, that he be baniſht for ever of that burgh quhair he diſobeyis, and in like wayis to landwart. *Ja.* I. *fol.* 18. *act.* 118. 1 *Mart.* 1427.

C. IV. How hoſpitallis ſould be veſyit be the Chancellar and Biſchopis.

ITEM, Anent hoſpitallis that ar fundat of almous deidis throw the Kingis realme, to be uphaldin to pure folk and ſeik, to be veſyit be the Chancellar, as thay have bene in the Kingis progenitouris times: And thay that ar fundat be Biſchopis, or uther Lordis, ſpirituall or temporall, to be veſyit be the Biſchop and Ordinaris quhom it effeiris to, and reduce and reforme thame to the effect of thair firſt fundatioun, *Ja.* I. *fol.* 6. *c.* 30. 12 *Martij*, 1424. *Item*, As anent the reformatioun of hoſpitallis, it is ſene ſpeidfull, that our ſoverane Lord charge his Chancellar, quhilk of law aucht to viſee hoſpitallis fundit be Kingis, and thay joine to him the Ordinar of ilk diocy, and utheris twa perſounis of gude conſcience, to viſee the ſaid

ſaid hoſpitallis; and quhair thay can get the fundatiounis of thame, to gar thame be keipit; and quhair na fundatioun can be gottin, to mak inquiſitioun of the cuntrie, and refer to the King to ſee the remeid thairfoir, *Ja.* II. *fol.* 41. *act.* 77. 6 *Mart.* 1457. *Item*, Anent the reformatioun of hoſpitallis, and for the keiping of the failzeit creaturis, it is ſtatute and ordanit, That all the Ordinaris of the realme ſall warne all thame that hes hoſpitallis in thair diocyis, and ſummound thame till a day, be the Kingis and the Ordinaris letteris; to the quhilk day, the Chancellar, or his deputis, ſall cum with the Ordinar, and ſee the infeftmentis and fundatiounis; and, be the aviſe of the Chancellar and Ordinar, to be reducit to thair firſt fundatiounis, quhairthrow Godis ſervice may be obſervit, and miſerabill perſounis ſuſtenit; and quhair the infeftmentis cannot be fundin, be the aviſe of the Ordinar and the Chancellar, the fruitis of the hoſpitall ſall be aſſignit to pure and miſerabill perſounis, in ſa far as the fruitis ar of avale: And that twa men of gude conſcience be warnit be the Ordinar, to be with him and the Chancellar for the reformatioun to be maid: And that to be done incontinent or the parting of the Ordinar and the Chancellar. *Ja.* III. *fol.* 47. *act.* 13. 9 *Octob.* 1466. *Ja.* III. *fol.* 55. *act.* 48. 20 *Novemb.* 1469. *Item*, Anentis the hoſpitallis, it is deviſit, ſtatute and ordanit, that the actis of parliament maid thairupon of befoir, be our ſoverane Lordis maiſt nobill progenitouris, be put to executioun in all punctis: And that certane viſitouris be maid, to the effect that thay may paſs and conſider the fundatioun of the ſaid hoſpitallis, and to cauſe the ſamin be keipit, conforme to the firſt fundatioun; and the ſaid viſitouris to be namit be the Kingis Grace. *Ja.* V. *fol.* 137. *act.* 81. 14 *Mart.* 1540.

C. V. Anent the ſuſtentatioun of the miſſell and lipper folk.

GIF ony perſoun that dwelt in the burgh, or wes born in it, be put out of the ſamin for leproſie, and he have gudis and geir ſufficient for his cleithing and ſuſtentatioun, he ſall be put in the hoſpitall of the burgh: And gif he hes not of his awin quhairon he may live and be clad, the burgeſſis of the town ſall mak ane gaddering, amangis thame, quhairon he may be ſwa ſuſtenit. *Item*, Na lipper nor miſſell folk ſall enter within the town, bot in the throw-paſſing, and ſall not gang fra dure to dure, bot thay ſall ſit at the throw-gangis of the burgh, without the portis thairof, to ask almons fra thame that paſſis in and out: And thairfoir na man ſall tak on hand to herberie lipper folk, under the pane of ane unlaw. *Leg. burg. c.* 62.

C. VI. That na lipper folk ſall enter within the town.

ITEM, It is ſtatute, that na lipper folk enter within the portis of the burgh: And gif ony happinis to enter, he ſall incontinent be caſſin furth be the Serjand of the burgh: And gif ony lipper folk dois in the contrare of this our inhibitioun, and uſis to enter within the burgh, the cleithing of the bodie ſall be takin fra him and brint, and he beand nakit, ſall be put furth of the burgh. It is in like wayis ſtatute, that ſum honeſt men of the burgh ſall gadder almons, to be gevin and diſtribute to all lipper folk in ony meit and convenient place without the burgh. *Stat. gild. c.* 16.

C. VII.

DIVERS ordinances maid anent beggaris. *Vide in libro impreſſo. Ja.* VI. *fol.* 5. *act.* 7. 20 *Octob.* 1579. *Ja.* VI. *parl.* 10. *c.* 16.

10 *De-*

10 *Decemb.* 1585. *Ja.* VI. *parl.* 12. *c.* 147. 5 *Junij*, 1592. *Ja.* VI. *parl.* 15. *c.* 288. 19 *Decemb.* 1597.

Anent hoſtellaris.

C. I. HOSTELLARIS ſould be in all burrowis, and throchfairis in townis. *Vid. in lib. impreſſo.* *Ja.* I. *fol.* 5. *c.* 26. 26 *Maij*, 1424.

C. II. ALL travelleris ſould ludge with thame. *Ja.* I. *fol.* 9. *act.* 61. 11 *Mart.* 1425. *Ja.* V. *fol.* 120. *act.* 20. 7 *Junij*, 1535.

C. III. THAY ſould tak reſſonabill prices for menis dennar and ſuppar. *Mar. R. fol.* 155. *act.* 27. 1 *Feb.* 1551.

Anent policie.

C. I. THE reule and governance for the peſtilence. *Ja.* II. *fol.* 38. *act.* 63. 19 *Octob.* 1456. Of ſtudis and ſtude places: Thay ſould be pleniſt with meiris and ſtallownis. *Ja.* V. *fol.* 121. *act.* 21. 7 *Junij*, 1535.

C. II. ANENT the bigging of caſtellis in the North. *Ja.* I. *fol.* 14. *act.* 92. 11 *Mart.* 1426. Anent the bigging of *Leith* wynd. *Ja.* V. *fol.* 137. *act.* 85. 14 *Martij*, 1540.

C. III. AGANIS the deſtroyeris of planting, haning and policie. *Ja.* VI. *fol.* 13. *act.* 18. 20 *Octob.* 1579.

Anent ſchulis.

C. I. ALL Baronis and ſubſtantious frehalderis ſould put thair airis to the ſchulis. *Ja.* IV. *fol.* 101. *act.* 87. 13 *Junij*, 1496.

C. II. SCHULIS ſould be reformit, and all teacheris of the zouth ſould be examinat be the viſitouris of the kirk. *Ja.* VI. *fol.* 12. *act.* 11. 15 *Decemb.* 1567.

C. III. FOR mantening of ſchulis, prebendaries, alterages, chaiplanreis may be diſponit be the Patron thairof. *Ja.* VI. *fol.* 13. *c.* 12. 15 *Decemb.* 1567. *Ja.* VI. *parl.* 12. *c.* 158. 5 *Junij*, 1592.

C. IV. SCHULIS of muſick ſould be erectit and viſied within burrowis and uther places. *Ja.* VI. *fol.* 20. *act.* 34. 20 *Octob.* 1579.

C. V. PRENTARIS ſould not prent ony bukis, or uther thing, bot that

that quhilk is viewit and examit, havand the Kingis licence. *Mar. R. fol.* 157. *act.* 35. 1 *Feb.* 1551.

Of the Kingis patrimonie.

C. I. CUSTUMIS and burrow-maillis ar annexit to the crown. *Ja.* I. *fol.* 2. *act.* 8. 26 *Maij*, 1424.

C. II. MYNES of gold and silver pertenis to the King. *Ja.* I. *fol.* 4. *act.* 14. 26 *Maij*, 1424.

C. III. ANNEXATIOUN of divers landis to the crown. *Ja.* II. *fol.* 34. *act.* 43. 4 *Aug.* 1455. *Ja.* III *fol.* 62. *act.* 77. 4 *Julij*, 1476. *Ja.* V. *fol.* 130. *act.* 54. 3 *Decemb.* 1540. *Ja.* V. *fol.* 139. *act.* 139. 14 *Mart.* 1540.

C. IV. How the Kingis propertie and casualities may be disponit.

OUR soverane Lord, of his awin consent, with avise of the Lordis of counsall, ordanis, that, forsamekle as ane greit part of his propertie and casualities is disponit and gevin to divers persounis, contrare the commoun weill of the realme, swa that his Comptroller cannot be answerit of his propertie, for the furnishing of his Majesties honorabill houshald; and his Thesaurare assurit of his casualities, swa that thairby he may furnish our soverane Lord, and the commoun materis of his realme: And for remeid heirof, his Hienes, with avise of the Lordis of his counsall, ordanis, that in time to cum na maner of gift nor dispositioun of our soverane Lordis propertie, nor casualities, be maid, grantit, or gevin to ony persounis; that is to say, anent his propertie, bot be avise of our soverane Lord his Comptroller and Commissionaris: And the samin to be schawin to the Chancellar, and Lordis of counsall, being with his Grace for the time, swa that the said gift and dispositioun may be understandin be thame, to be for the Kingis proffeit, honour, and commoditie of his realme, and utherwayis to have na passage. And in like wayis anent his casualities, the samin to pass in maner foirsaid, and to be grantit be our soverane Lord, with avise of his Comptroller and Compositouris, and to be schawin to the Lordis, as is abone writtin, to be considerit be thame as said is, and to have na passage utherwayis; swa that his haill propertie and casualities may be brocht to his Comptroller and Thesaurare, in his name, for the furnessing of his expensis, and commoun materis of his realme. 7 *Aug.* 1527, 1 *t. c.* 306.

C. V. Annext landis and fré forestrie cannot be disponit but by act of parliament.

ANNEXT landis may not be disponit without consent of parliament, *Ja.* I. *fol.* 23. *act.* 148. 15 *Octob.* 1431. *Ja.* II. *fol.* 26. *act.* 2. 20 *Mart.* 1437. Landis beand annext to the crown, or beand the Kingis fré forrestis, ordanit for the fence of his wild beistis, may on na wayis be annalzeit or disponit without the avise and consent of the thré estatis. 21 *Feb.* 1532, *the King* contra Robert Huntar, 1 *t. c.* 407.

C. VI. Divers causis of reductioun of the Kingis propertie.

TAK and assedatioun of landis, fischingis, rentis, and utheris possessiounis pertening to the King, set or gevin to ony persoun,

may be reducit and decernit vacand in his Hienes handis, gif he to quhome the ſamin is ſet payis not the ſowmis of money, ſervice, and uther dewteis, at the termis contenit in the ſamin, 3 *Decemb.* 1500, *the King* contra Alexander Innes *of that ilk.* 23 *Julij*, 1529, *the King* contra David *Erle of* Craufurd. *Item*, Gif the ſamin be ſet be him in his les age, and thairthrow fallis under his general revocatioun. *Item*, Gif his Hienes rental be diminiſhit in ſetting of the ſamin, the quhilk may be provin be the chekkar rollis thairof, 3 *Decemb.* 1500, *the King* contra Pat. Home *of* Faſcaſtell. And ſiclike is to be underſtuid of all chartouris and infeftmentis of few maid be the King to ony perſoun, of his landis or propertie; for the ſamin is of nane availl, and may be reducit for diminutioun of his rentall. 14 *Jan.* 1529, *the King* contra *the Laird of* Frendraught, 3 *April.* 1546, *the King* contra Alexander Nicolſon. Or gif thay be ſet be him beand within age. 21 *Feb.* 1532, *the King* contra *Erle of* Mortoun, *t.* 1. *c.* 195.

C. VII. The Prince's propertie may not be diſponit be the King, as King.

LANDIS pertening to the Prince of *Scotland*, and beand annext to the principalitie, may not be ſet in few ferme, nor annalzeit, without conſent of the Prince: And gif the King diſponis the ſamin landis, makand na mentioun in his diſpoſitioun that he diſponit thame as Prince; the infeftment, alienatioun or diſpoſitioun, is of nane avail, and may be reducit, 4 *Feb.* 1537, *the King* contra *the Laird of* Calderwode. 1 *Feb.* 1540. 23 *Junij*, 1543, 1 *t. c.* 492. Becauſe landis of the principalitie, that is, landis pertening to the Prince, as Prince and Stewart of *Scotland*, may not be gevin and diſponit be the King, as King, bot be the King as Prince and Stewart; ſwa that the ſamin be done with conſent of the thré eſtatis, 1 *Feb.* 1540. 1 *Julij*, 1541. 1 *t. c.* 1053.

C. VIII. Diſpoſitioun of the Kingis caſualities.

ALL giftis and diſpoſitiounis of eſchetis, or ony uther caſualitie pertening to the King, gevin, grantit and diſponit be his Hienes to ony of his liegis, is null and of nane availl, and aucht and ſould be reducit be the auditouris of the chekkar, or the Lordis of counſall, gif the ſamin be maid under the Kingis ſignet; be reſſoun the ſamin ſould be under the privie feill: Or gif he to quhome the ſaid gift is diſponit, in making his compoſitioun thairfoir with the Theſaurare, circumvenis him, not ſchewand to him the juſt avale and quantitie of the gudis and geir contenit in his gift, and thairthrow obtenis the ſamin compoſitioun for ane les ſowme than he wald have obtenit it, gif he had declarit the veritie: Or gif the ſamin compoſitioun be ſubſcryvit be the Theſaurar allanerlie, and be na utheris his colleguis, thair beand certane Commiſſionaris depute be the counſall to concur with him in ſic caiſſis. 20 *Julij*, 149c, Alexander Gordoun *contra* Williame Makclellane, 1 *t. c.* 104.

C. IX. The Kingis caſualities may not be diſponit without conſent of the Theſaurare.

ALL giftis and diſpoſitiounis of wardis, non-entreſſis, mariages of airis, or uther caſualities quhatſumever, maid be the Kingis Hienes to ony of his liegis, without expres conſent and aviſe of the Theſaurare, is null and of nane avail, be way of exceptioun, 20 *Feb.* 1552, *the Quenis Theſaurare* contra *the Laird of* Preſtoun, 1 *t. c.* 720.

THE

THE Thesaurare takand allowance in his comptis of ony ordinare pertening to the King, or his Officiaris, sould be compellit to pay sa mekle as he hes tane allowance of, to thame havand interesse thairanent, or to thair executouris, efter thair deceis. 27 *Julij*, 1532, 1 *r. c.* 496. C. X. The Thesaurare sould pay all that is to him allowit.

THE Kingis Comptrollar takand allowance in the chekkar of sowmis of money to be payit be him, as Comptrollar to ony persoun, gif he postponis and refusis to pay the samin, he aucht and sould be decernit to mak payment thairof, quhidder he be dischargit his office of comptrollarie or not, his allowance of the samin beand provin be the extract of the chekkar rollis. 6 *Feb.* 1499, *The Laird of* Blacader *contra. M.* Heu Martene, 1 *r. c.* 179. C. XI. The Kingis Comptroller sould pay all quhairof he takis allowance.

THE commoun use of this realme to pay the Kingis maillis and dewteis to his Hienes Comptrollar, is at twa termis in the zeir, *Whitsounday* and *Martinmas* in winter, be equal portiounis: And thairfoir all his Hienes tenentis ar astrictit, bund and oblist heirto, albeit thay alledge thame and thair predecessouris to have bene in use of payment of thair haill zeiris maillis at ane term allanerlie, *viz. Whitsounday* or *Martinmas*. 11 *Januar.* 1522, *The tenentis of* Auchtermuchtie *contra the Kingis Comptrollar*, 1 *r. c.* 654. C. XII. The termis of payment of the Kingis maillis.

THE tenentis of the Kingis propertie sould not be troublit. *Ja.* IV. *fol.* 89. *act.* 38. 15 *Feb.* 1489. C. XIII.

DETENERIS of the Kingis rents sould be punist. *Ja.* III. *fol.* 70. *act.* 106. 24 *Feb.* 1483. C. XIV.

THE Kingis propertie and casualties sould be inbrocht to the chekkar. *Ja.* V. *fol.* 135. *act.* 75. 14 *Mart.* 1540. C. XV.

THE Kingis revocatioun: Of in-bringing of his propertie, and payment of his servandis fies. *Ja.* IV. *fol.* 85. *act.* 24. 15 *Feb.* 1489. C. XVI.

THE quhilk act beand with our soverane Lord and his counsall avisit, considerit, and at lenth understandin, thay have consavit, be vigour and strenth of the samin, all sic infeftmentis, giftis, donatiounis or alienatiounis, as is abone expremit, maid, or to be maid be our said soverane Lord, unto his age of xxi. zeiris, ar of nane avail, force nor effect, notwithstanding ony subscriptioun of his Hienes, with the Lordis of counsall, all or in part; seing all the saidis giftis abone writtin ar derogat, annullit, restringit and rescindit, quhill the Kingis age of twentie ane zeiris: And thairfoir decernis and declaris all the saidis infeftmentis, giftis, or assignatiounis abone expremit, maid or to be maid, quhill his said age of xxi. zeiris, to be of nane avail, strenth nor effect in time to cum, and allutterlie expirit: And designand fies to be payit to Officiaris, efter the forme of the said act; charging heirattour all Schireffis, Stewartis, Baillies, Chalmerlanes, and utheris Officiaris, that thay raise and inbring all the haill propertie, and in speciall all the maillis, proffeitis and dewteis of the termis of *Whitsounday* and *Martinmas* last bypast, and of the termis of this present zeir: And also, C. XVII. Ratificatioun and interpretatioun of the act preceding, maid be the Lordis of sessioun.

alſo, becauſe it is underſtand that thair wer certane landis gevin be the Kingis father, quhome God aſſoilzie, that were annext to the crown, and micht not be gevin becauſe of the ſaid annexatioun; that thairfoir all theſe landis be takin away in likewayis agane, as the giftis maid be his Hienes, efter the forme of the ſaid act of parliament, notwithſtanding ony of the ſaidis letteris gevin or to be gevin thairupon, 15 *Junij*, 1489.

C. XVIII. The powar and juriſdictioun of the Lordis Auditouris of chekkar.

All civil actiounis, clames and contraverſies, concerning the Kingis propertie, quhairof compt is maid in the chekkar, aucht and ſould be diſcuſſit befoir the Auditouris of the chekkar, and befoir na uther Judge within this realme, 11 *Mart.* 1529, *The tenentis of* Auchtermuchtie *contra the Officiall of* Sanctandrois, 1 *t. c.* 296. And alſo, the Auditouris of the chekkar, and nane utheris within this realme, ar Jugeis competent in all actiounis and contraverſies anent allowance and comptis concerning the Kingis houſhald, 23 *Mart.* 1533, N. Thomſone *Chaiplane* contra Robert Bartane, 1 *t. c.* 424. Bot the Auditouris of the Kingis chekkar hes na powar to judge or decide upon ony ſummondis or materis in the chekkar, bot allanerlie upoun ſic ſummondis and materis as belangis and pertenis to the chekkar, and to the Kingis comptis to be maid thairin: And gif thay do the contrare in ſic caiſis quhilk be not chekkar materis, the ſamin is of nane avail, force nor effect, 29 *Julij*, 1527, 1 *t. c.* 297.

C. XIX. Pane of thame that comperis not to mak compt in the chekkar.

All Schireffis, Stewartis, Proveſtis, Baillies of burrowis, and cuſtumaris thairof, quhilkis being ſummonit be the Kingis precept, comperis not in the Kingis chekkar to enter thair comptis in the rollis thairof, nor zit makis *æque*, nor endis thair comptis, ſall pay to the Kingis Hienes all the expenſis maid in the chekkar, fra the day to the quhilk thay war ſummondit, and comperit not; and als, thay ſall pay thair unlawis for non-compeirance: And als thair gudis, geir and landis ſall be diſtrinzeit for the reſt of the ſowmis aucht and be thame to the Kingis Hienes, and reſtand on thair heid in the chekkar rollis. 29 *Aug.* 1502, 1 *t. c.* 120.

C. XX. Chekkar rollis.

1. *Rotuli proprietatis.*

The roll of the propertie, *anno* 1493.

Item, The rollis of the proprietie, *annis* 1503, 1505, 1510, 1511, 1513, and ſwa furth everie zeir, unto the zeir of God 1565 *incluſive.*

2. *Rotuli vicecomitatuum annorum ſubſcriptorum.*

Rotulus anni M. quingenteſimi.

Rotuli annorum 1508, 1513, 14, 15, 16, 17, 18, 1521, 23, 25, and ſwa furth, unto the zeir of God 1547 *incluſive.*

Rotuli annorum 1550, *ad annum* 1565 *incluſive.*

3. *Rotuli cuſtumariorum annorum ſubſcriptorum.*

Rotuli annorum 1514, 15, 16, 17, 18.

Ro-

Rotuli annorum 1521, and ſwa furth, to the zeir 1554 *incluſive.*
Rotuli annorum 1546, 7, 9. 1550, and ſwa furth, to the zeir of God 1560.
Rotuli annorum 1562, 3, 4, 5, *&c.*

4. *Computa computorum rotulatorum annorum ſubſcript.*

Computum Patricij Hamiltoun, anni 1515.
Computum Alexandri Jardane, anni 1516.
Computum Roberti Bartane, 1518, 19. 1520, 1, 2, 3, 4, 5, 6, 9. 1530, 1531.
Computum Jacobi Colvill, annorum 1527, 8, 9. 1531, and ſwa furth to the zeir 1543.
Computum Thomæ Menzies, anni 1543.
Computum commendatarij de Culros, annorum 1546, 1550, 1, 2, 3.

5. *Computa theſaurariorum annorum ſubſcriptorum.*

Computum Willelmi de Stratherne militis, anni 1516.
Computum magiſtri Johannis Cambell, annorum 1517, 18. 1522, 1524.
Computum Jacobi Moravienſis epiſcopi, anni 1526.
Computum Joannis Cambell, anni 1526.
Computum Archibaldi Douglas, annni 1527.
Computum Roberti Carncors, anni 1529.
Computum Roberti Bartane, annorum 1529, 1530.
Computum Magiſtri Gulielmi Stewart, anni 1531.
Computum Willelmi Alleit, Aberdon. 1532, 3, 5.
Computum Georgii Mitchell, anni 1535.
Computum Epiſcopi Aberdonen. annorum 1536, 7.
Computum Abbatis Sanctæ crucis, anni 1538.
Computum Jacobi Kircaldy de Grange, anni 1538.
Computum Cardinalis, in Gallia, anni 1538.
Computum Jacobi Kircaldy, anni 1540, 1, 2, 3.
Computum Joannis Archiepiſcopi Sancti Andreæ, annorum 1546, 1550, 1, 2, 3.
Computum Jacobi Hamiltoun de Kips, anni 1538.

6. *Libri reſponſorum.*

Liber reſponſorum, incipiens tempore Jacobi IV. *anno regni ſui ſecundo uſque ad A. D.* 1513.
Liber reſponſorum Jacobi V. *incipiens anno regni ſui primo, uſque ad annum regni* XIV.
Liber reſponſorum annorum 1528, *et uſque ad annum* 1554 *incluſive.*

7. *Libri rentales.*

Liber rentalis, incipiens Stratherne, anno 1485.
Libri rentales, annis 1482, 1486, *&* 1499.
Libri rentales, annis 1508 *&* 1516.
Liber rentalis, anno 1516, *incipiens* 20. *Januarij.*
Liber rentalis dominij de Galloway, anno 1517.

Libri rentales, 1531. & 1541.
Liber rentalis de inſulis, *anno* 1541.
Libri rentales, *annis* 1539 & 1542.
Liber rentalis de Fyf, *Dicher & Toyer*, *anno* 1541.

8. *Computa theſaurariorum novarum augmentationum*, &c.

The lawis of foreſtis.

C. I. Of entering of beaſtis within foreſtis in time of pannage.

IT is defendit and forbiddin, that ony perſounis, als weill dwelland within woddis as without the ſamin, enter with thair nolt and cattell within ony park, or hanit place of the wod or foreſt, except thay have libertie and licence grantit to thame be the Foreſtar, fra the xv. day befoir the feiſt of Sanct *Johne* the Baptiſt, and for xv. dayis efter the ſamin feiſt, under the pane of tinſell of viij. ky: Bot efter the iſche of the ſaid time, or moneth, it is leaſum, without tinſell of the ſaid viij. ky, to enter within the foreſt with nolt and cattell, except the ſamin cattell be fund and apprehendit be the Foreſtar, with thair herd and keipar being preſent with thame, havand a fire, or horne, or ane dog callit *Warſatt*; or gif thay be fund in the foreſt lyand thair all nicht; in the quhilkis caiſis viij. ky may be eſcheitit in preſence of lauchfull witneſſis. *Leg. Foreſt. c.* 1.

C. II. Of cattell enterand within foreſtis.

GIF ony perſoun quha uſis to dwell and remane neir to foreſtis, ſufferris and permittis his cattell to enter thriſe within the foreſt, he ſall pay to the Foreſtar, ilk time, iiij. *d.* And gif thay enter the fourth time, albeit na keipar be preſent, the ſamin beand provin be lauchfull witneſſis, viij. ky ſould be eſcheitit: And gif the Foreſtar be him alane, he ſould mak a ſigne or takin on the earth, or trie, quhair the cattell is fund, and ſould thriſe blaw his horne, and thairefter call and drive the cattell to the Kingis caſtell, and ſwa eſcheit viij. ky. *Leg. Foreſt. c.* 2.

C. III. Of cattell pertenand to burgeſſis.

GIF cattell pertening to burgeſſis be fund and apprehendit within the foreſt thrie divers and ſindrie times, the awner thairof ſall pay for ilk time iiij. *d.* And gif thay be fund thair the fourth time, the ſamin beand provin be ſufficient witneſſis, viij. ky may be eſcheitit. *Leg. Foreſt. c.* 3.

C. IV. Of ſcheip.

GIF ſcheip be fund within the foreſt, havand ane ſcheipherd, or without ane, the ſamin beand provin be ſufficient witneſſis, the Foreſtar may tak to himſelf ane ſcheip of the flock: Bot he may not tak bot 1 *d.* allanerlie for ilk flock of ſcheip pertening to the Kingis husbandman or tenent. *Leg. Foreſt. c.* 4.

C. V. Of gaites.

GIF gait be fund and apprehendit in the foreſt ſindrie times, it is leaſum to the Foreſtar, at ilk time, to tak ane of thame, and hing him be the hornis on ane trie: And gif thay be fund thair the fourth time, he may ſlay ane of thame, and leive his intrallis in the place, in ſigne and takin that he and the reſt were fund and apprehendit thair. *Leg. Foreſt. c.* 5.

THE

C. VI. Of ſwine.

THE uſe and cuſtume concerning ſwine, is to defend and forbid publictlie in paroche kirkis, that thay enter not within the foreſt: And gif, efter thay ar defendit and forbiddin, thay be fund and apprehendit be the Foreſtar within the foreſt, it is leaſum to him, at ilk ane of thré times, to tak ane thairof: And gif thay be apprehendit the fourt time, thay may be all tane to be furthcumand to the Kingis uſe, *Leg. Foreſt. c.* 6. And gif thair happin abundance of accornes to be within the Kingis foreſt, the Foreſtar ſould charge the indwellaris within burgh, als weill as thame that dwellis to landwart to bring thair ſwine, that the King may have and tak fra thame pannage and dewtie for paſturage. *Leg. Foreſt. c.* 6.

C. VII. Of foggage and pannage.

ITEM, Gif the King will ſet girſs, in time of foggage, the quhilk is fra the feiſt of *All-hallowmaſs* to the feiſt of Sanct *Patrick* in *Lentron*, ilk kow ſall pay viij. *d.* for foggage, and for ilk quoy ij. *d. Leg. Foreſt. c.* 7. *ex libro Galbraith.*

THIS is the maner of pannage, *viz.* Of ilk ſowme, that is, ten ſwine, the King ſall have the beſt ſwine, and the Foreſtar ane hogling: And gif thay be fewar than ten, the King ſall have nathing, bot the Foreſtar ſall get ane Hogling, and for ilk ſwine that ſall happin to be thair, 1 *d.* And gif thay be auld hoglingis, the Foreſtar ſould have nathing bot ane hogling of ten: And gif thair be fewar hoglingis than ten, the Foreſtar ſall have bot ane halfpenie for ilk hogling. *Leg. Foreſt. c.* 8.

C. VIII. Of ſtudis and horſe.

GIF ſtudis of horſe or meiris, efter thay ar forbiddin to enter within the foreſt, be apprehendit thairin, it is leaſum to the Foreſtar to tak ane ſtaig of ane zeir auld for the firſt time, and for the ſecund time ane ſtaig being of twa zeir auld; for the thrid time, ane ſtaig of thré zeir auld; and for the fourth time, the haill ſtudis and multitude may be takin, to be furthcumand to the Kingis uſe. *Item*, It is leaſum to tak iiij. *d.* for ilk horſe that is dantonit, tamit and riddin. *Leg. Foreſt. c.* 9.

C. IX. Of cairtis and ſleddis.

IT is leaſum to tak xxx *d.* for ilk wane, cairt or ſled, fund and apprehendit, without licence, within the foreſt: And gif thay paſs away befoir thay be deprehendit be the Foreſtar, thay ſall paſs quyte and fré. *Leg. Foreſt. c.* 10.

C. X. Of houndis and doggis.

GIF ony greyhound or dog beis fund rinnand in hurt and harme of the *Foreſt*, he ſould be tane and preſentit to the Foreſtar, and to the keipar of the grene wod, quha ſould ſend him to the Kingis Grace, or to the principall Juſticiar of the foreſt: Bot gif ony maſtive or ratch be fund within the foreſt, and it happin him to be cheinzeit, or to have feſning, the awner of the ſaid dog ſall be quyte and fré thairanent; bot gif he have na feſning and cheinzie, his maiſter and awner ſall be guiltie and culpabill thairfoir, like as gif he war apprehendit leidand him in his hand, and huntand him within the foreſt; and he ſould be compellit to find ſufficient pledge to anſwer thairanent, quhais name ſould be put in write, and alſo quhat kind of dog he was. *Leg. Foreſt. c.* 90.

GIF

C. XI. Of ane gang-and out of the richt way within the foreſt.

GIF ony unknawin perſoun enter within the foreſt, and being apprehendit in ony forbiddin gait, or paſſage, mak faith, and ſweare ſolemnelie, that he knew not that way to be defendit and forbiddin, and that he knawis not the richt way; the Foreſtar ſall guyde him to the richt and commoun paſſage, and ſuffer him to paſs away without trouble or harme: Bot gif he be ane knawin man, *videlicet*, havand knawlege of the way and paſſage, he ſall be takin and brocht to the Kingis caſtell; and thair, without the portis of the ſamin, the Foreſtar, in preſence of ſufficient witneſſis, ſall tak his upmoſt claith, togidder with all ſowmis of money that ſall happin to be within his purſe for that preſent time, and his bodie ſall be gevin to the Conſtable of the caſtell, or to the porter thairof, to be put in priſoun, thairin to remane during the Kingis will. *Leg. Foreſt. c.* 11.

C. XII. Of licence to tak and ſlay wild beaſtis.

IT is leaſum to all Erlis, Biſchopis and Baronis paſſand throw the Kingis foreſt, and at his Grace's command, to tak ane or twa beaſtis, at the ſicht of the Foreſtar, gif he be preſent; utherwayis he ſould do the ſamin honeſtlie; or ellis he ſould cauſe ane blaw ane horn for him, that he appear not to do it thiftuouſlie: And in like wayis it is leaſum to him, and ilk ane of thame, to do as ſaid is, in thair returning home, *Leg. Foreſt. c.* 91. *Item*, Gif ony perſoun takis ony wild beaſt within the foreſt wrangouſlie, and without ane warrand, his bodie may be arreiſtit in ony place within the boundis of the foreſt; and quhen he is takin, it is not leaſum to the Foreſtar to releive him, or let him paſs away, without ſpeciall command of the King, or of the Juſticiar of the foreſt, *Leg. Foreſt. c.* 92. *Item*, Gif ony perſoun happinis to ſé ony treſpaſſour within the boundis of the foreſt, takand or away-caryand ony wild beaſt, he ſould do diligence, efter his powar, to tak and apprehend him: And gif he may not do the ſamin, he ſould raiſe a hoy and cry to the narreſt townis beſide the Kingis foreſt, and ſould paſs and manifeſt the ſamin to the Kingis Schireffis, and to the Foreſtar; the quhilk gif he dois not, he ſall be in the Kingis will and mercie. *Leg. Foreſt. c.* 92.

C. XIII. Of hunting within the Kingis foreſt.

GIF ony man huntis within the Kingis foreſt, without licence, he ſall pay x *l.* And gif ony fré tenent, be vertue of his infeftment, havand fré powar to hunt on his awin land, neir to the Kingis foreſt, lettis the houndis and doggis rin in his awin land, and thay follow the beaſt within the Kingis foreſt, it is leaſum to him to follow his houndis within the Kingis foreſt, als far as he may caſt his horne, or his doggis leſche; and gif it happinis the houndis and doggis to tak the beaſt, quhilk thay followit within the ſaid ſpace, that man ſall incontinent tak with him the ſamin beaſt, and his houndis, without challenge of ony man: Bot gif it happin him, in following his houndis and doggis within the foreſt, to overpaſs and excede the foirſaid ſpace, he ſall pay viij. ky, and ſall tine his houndis and doggis togidder with the beaſt, *Leg. Foreſt. ex lib. Galbraith:* And quhaſaevir followis his houndis and doggis, rinnand at ony beaſt within the Kingis foreſt, he ſall remove and lay aſide his bow and his arrowis, gif he ony hes. *Leg. Foreſt. ex lib. Galbraith.*

GIF

C. XIV. Of cutting and ſheiring of girs and grene wod.

GIF ony man be tane for cutting of grene wod in the foreſt, he ſall give viij. ky to the foirfault: And gif ony be wont to cut or ſcheire girs, or ony uther thing, in the Kingis foreſt, for ilk time of thré times he ſall give viij. ky, and the feird time x. *lib. Leg. Foreſt. ex lib. Galbraith.*

C. XV. Of ane waif beaſt.

GIF ony waif beaſt be fund in the foreſt, the ſamin ſould be kepit and obſervit, and ſould be proclamit at thré courtis; and in the fourt court ſall be adjudgit to the King as eſcheit: Bot gif the awner of the beaſt compeiris, and offerris him to prove lauchfullie that the ſamin pertenis to him, the finder of the beaſt ſould mak publicatioun thairof at the cheif manor place of all ſteidis, on ilk ſide thairabout; that the ſamin may be maid knawin to all and ſindrie that will challenge and follow the beaſt that is ſwa fund. *Leg. Foreſt. ex lib. Galbraith.*

C. XVI. Of dead wild beaſtis.

ITEM, Gif ony wild beaſt be fund woundit or dead within the foreſt, and it be not knawin quha hes committit or done the ſamin, inquiſitioun ſall be maid in the nixt court; and in the mean time the finder thairof ſall be attachit under ſicker and ſure burrowis, quhill cognition be takin of the tranſgreſs or treſpas; and the fleſh of the beaſt fundin ſall be ſent to the houſis and hoſpitallis of the lipper folkis, gif thair be ony thairabout in the cuntrey; utherwayis, gif thair be na ſic infirme perſounis neir by, the ſamin fleſh ſall be gevin to the puire and ſeik folkis, and the head, with the ſkin, and the arrow, gif ony be fund, ſall be preſentit to the Juſtice quhen he comes to the juſtice air. *Leg. Foreſt. ex lib. Galbraith.*

C. XVII. Of treſpaſſis committit within foreſtis perteining to Baronis.

ITEM, Gif ony man committis ane crime or treſpas in the foreſt of ane Baron, being infeft be the King with fré foreſt, with inhibitioun that na man do ony treſpaſs in the ſamin, under the foirfault and pane of x. *l.* the ſamin treſpaſſour, being lauchfullie convict of ſic tranſgreſſioun, at the ſute and inſtance of the Baron, in the Kingis court, ſall pay for his fault to the King x *l.* and the Lord of the foreſt, or his Foreſtar, ſall have the horſe, and all that is fund with the ſaid treſpaſſour tranſgreſſand in the foreſt, to be bruikit and joiſit be him in all time cuming: And gif the Lord of the foreſt will not perſew the ſaid crime and treſpas, or zit diſſemblis for his particular affectioun born to ſic treſpaſſour, that he knawis of ſic crime or treſpas, nevertheles the King hes gude richt and title to ask x. *l.* for breking of his command and inhibitioun foirſaid. Attour, gif the Lord of the foreſt reſſavis ony money or uther gude deid fra the ſaid treſpaſſour, and thairfoir heillis or conceillis the fault or crime, and will not follow or perſew the ſamin, the King hes gude richt and actioun for x *l.* aganis the ſaid Lord ſwa deſiſtand to perſew the ſaid crime and treſpas. *Leg. Foreſt. ex lib. Galbraith.*

C. XVIII.

Anent the ſawing of brome, planting of wod, and making of heigis, *Ja.* II. *fol.* 43. *act.* 91. 6 *Mart.* 1457. *Ja.* V. *fol.* 118. *act.* 10. 7 *Junij*, 1535. *Mar. R. fol.* 167. *act.* 33. 20 *Junij*, 1555.

C. XIX. OF the unlaw of grene wod, *&c. Ja.* IV. *fol.* 104. *act.* 106. 11 *Mart.* 1503. *Ja.* V. *fol.* 118. *act.* 19. 7 *Junij*, 1535.

C. XX. CATTELL or gudis found within foreſtis may be eſchetit. *Ja.* V. *fol.* 119. *act.* 12. 7 *Junij*, 1535.

C. XXI. ANENT the wod of *Falkland. Mar. R. fol.* 165. *act.* 23. 20 *Junij*, 1555.

Anent the patrimonie of the kirk.

C. I. Anent ſuperioritie of landis mortifyit to the kirk.

IT is to wit, that it is not leaſum to ony man to give his landis to the kirk, or ony religious place, and thairefter tak the ſamin agane, to be haldin be him and his airis of the ſamin kirk or place: Nor it is not leaſum to ony kirk or religious place, to reſſave, be alienatioun or utherwayis, ony mannis landis, and give the ſamin thairefter to him agane, to be haldin in cheif of thame: And gif ony man giftis his landis in maner abone expremit, and is convict and decernit to have done the ſamin, his gift, alienatioun or diſpoſitioun is of nane availl, force nor effect, and the landis ſwa gevin aucht and ſould return and pertene to the ſuperiour or ſuperiouris thairof. *Leg. Foreſt. c.* 84.

C. II. Kirk landis may not be annalzeit without conſent of the King.

IT is to wit, that na Biſchoppis nor Abbottis may annalzie or give *ad remanentiam* ony part of thair landis, without his Grace's conſent and confirmatioun; becauſe thair landis and baronies ar gevin to thame as almons be the King and his predeceſſouris, *Lib.* 2. *c.* 26. *De jud. c.* 113. And gif ony Abbottis, Priouris, Miniſteris or keiparis of hoſpitallis, or ony uther houſe, foundit be the King or his predeceſſouris, annalzies the landis or tenementis left, gevin or diſponit be his Hienes or his predeceſſouris to thame, thair forebearis, or to the ſaidis hoſpitallis or houſis; it is leaſum to the King to recognoſce thay ſamin landis and tenementis, and to put his handis thairto, at his awin will and pleaſour: And the alledgit awner or buyer thairof ſall have na richt nor actioun for recovering of the ſamin landis, nor zit for reſtitutioun of the ſilver and money gevin and payit be him for the ſamin: And gif the ſaid kirk, hoſpitall, or religious houſe, was foundit be ane Erle, Baron, or ony uther perſoun, and landis and tenementis gevin and mortified thairto be ony of thame, the quhilk thairefter happinis to be annalzeit and ſauld, as ſaid is, he that gave the ſamin, or his air and ſucceſſour, hes gude richt and title to call and perſew for recovering and recognitioun of the ſamin landis and tenementis, as pertening to him be reſſoun of the ſaid alienatioun, as his proper gudis and geir: And this to be extendit to all landis gevin in name of almons, for reparatioun or uphalding of the kirk, help of the puir, or to ony uther godlie uſe, the quhilk happinis to be ſauld and annalzeit as ſaid is, *Leg. Foreſt. c.* 84. Attour, gif ony landis or tenementis be gevin for ſuſtentatioun of the puir, or for ony uther almons, albeit the ſamin be not ſauld nor annalzeit, bot allanerlie the almons abſtractit and withdrawin fra the richt uſe thairof, be the ſpace of

twa

twa zeiris, the giver thairof, or his airis, hes juſt actioun for repetitioun of the ſamin land and tenement, as returnit and cum again in his handis, be vertue of the abſtracting and not payment of the ſaid almons. *Leg. Foreſt. c.* 84.

C. III. Of kirk landis ſet to ony perſoun and two airis.

LANDIS ſet be ane kirkman to ony perſoun for all the dayis of his lifetime, and to twa airis efter him, is an maner and kind of alienatioun of the law, and thairfoir is invalid and null in the ſelf, albeit the ſamin be done with all the commoun ſolemnities uſit in ſic caiſſis, except the ſamin be lauchfullie confirmit, as all uther alienatiounis. *Pen. Feb.* 1494, *The Biſchop of* Aberdene *contra David Lindſay*, 1 *t. c.* 49.

C. IV. Alienatioun maid in diminutioun of the rentall.

GIF landis be mortifyit to the kirk with this reſtrictioun, that the Chaplane and poſſeſſour for the time ſall not annalzie the ſamin without conſent of the Biſchop, except the ſame be done for the proffeit and augmentatioun of the rentall: And gif the Chaplane, or poſſeſſour, annalzie the ſamin without conſent of the Biſchop, and without augmentatioun of the rentall, the ſamin alienatioun is of nane availl, and may be reducit. 27 *Maij*, 1541, 1 *t. c.* 1057.

C. V.

THE adverſaris of Chriſtis evangell ſould not injoy the patrimonie of the kirk, *&c.* *Ja.* VI. *fol.* 7. *cap.* 3. 26 *Jan.* 1572.

Anent benefices.

C. I. Na ſtranger may poſſeſs within the realme.

NA ſtranger nor alien, without he be naturalizat be the King, with conſent of the Lordis of ſecrete counſall, may bruik ony benefice, office, or dignitie, within this realme. *Pen. Julij*, 1519, 1 *t. c.* 626.

C. II. Thriddis of benefices.

THE King may ſet in tak to quhome he pleiſis, the teindis, landis, maillis, fermis, and dewteis of landis aſſumit in the thriddis of benefices, ſwa lang as the ſamin remanis with his Hienes be reſſoun of aſſumptioun. 29 *Julij*, 1566, *The Quene and the Laird of* Grange *contra the Abbot of* Dumfermling, 1 *t. c.* 1339.

C. III. Penſioun out of benefices.

ANE havand ane penſioun diſponit to him out of ony benefice, ſubject to the payment of ony taxatioun, for the ſuſtening of our ſoverane Lordis college of juſtice, he aucht and ſould pay ane part of the ſamin taxatioun, conforme to the rate and quantitie of his penſioun. 8 *Mart.* 1540, *Abbot of* Dryburgh *contra* Home, 2 *t. c.* 24.

C. IV.

THAT na Clerkis paſs out of the realme bot on conditiounis. *Ja.* I. *fol.* 4. *act.* 15. 26 *Maij*, 1424, *& fol.* 18. *act.* 119. 1 *Mart.* 1427. *Ja.* IV. *fol.* 100. *act.* 86. 13 *Junij*, 1496.

C. V.

THAT na Clerkis purches benefices, or office of collectorie at the court of *Rome*, the quhilk was not thairat befoir. *Ja.* III. *fol.* 56. *act.* 54. 6 *Maij*, 1471. *Ja.* IV. *fol.* 82. *act.* 12. 6 *Octob.* 1488.

1488. *Ja.* III. *fol.* 68. *act.* 104. 2 *April.* 1481. *Ja.* III. *fol.* 70. *act.* 107. 24 *Feb.* 1483. *Ja.* IV. *fol.* 82. *act.* 13. 6 *Octob.* 1488. & *fol.* 94. *act.* 63. & 64. 26 *Junij*, 1493. *Ja.* IV. *fol.* 100. *act.* 86. 13 *Junij*, 1496.

C. VI. THAT the King preſent to benefices all times, the ſege vacand. *Ja.* III. *fol.* 68. *act.* 103. 2 *April.* 1481.

C. VII. How the Commiſſaris ſall proceid in beneficiall materis. *Ja.* VI. *fol.* 21. *act.* 36. 15 *Decemb.* 1567.

C. VIII. ANENT purcheſing of the Pape's bullis, or giftis of the Quene our ſoverane Lordis mother. *Ja.* VI. *fol.* 10. *act.* 9. 26 *Januar.* 1572.

C. IX. THAT na Clerkis purches penſiounis of benefices within this realme. *Ja.* I. *fol.* 4. *act.* 16. 26 *Maij*, 1424. *Ja.* III. *fol.* 46. *act.* 5. 9 *Octob.* 1466.

C. X. THAT na commendis be purcheſit. *Ja.* III. *fol.* 46. *act.* 4. 9 *Octob.* 1466.

C. XI. THAT na *Engliſhman* have benefice within *Scotland*. *Ja.* III. *fol.* 47. *act.* 9. 9 *Octob.* 1466.

C. XII. TAXATIOUN of benefices to be maid efter the auld taxatioun. *Ja.* IV. *fol.* 95. *act.* 70. 26 *Julij*, 1493.

C. XIII. APPROBATIOUN of the act maid anent the diſpoſitioun of benefices to the Miniſteris of Chriſtis evangell. *Ja.* VI. *fol.* 11. *act.* 10. 26 *Januar.* 1572.

C. XIV. GLEIBIS and manſis may not be ſet in feu, or lang takkis: The manſe pertenis to the miniſter. *Mar. R. fol.* 173. *act.* 7.. 4 *Junij*, 1563.

C. XV. EXPLANATIOUN of the act maid anent manſis and gleibis. *Ja.* VI. *fol.* 8. *act.* 5. 26 *Januar.* 1572.

C. XVI. ANENT thriddis of benefices grantit in *December* 1561, for ſuſtening of the Miniſteris, and utheris effairis of the Prince. *Ja.* VI. *fol.* 12. *act.* 10. 15 *Decemb.* 1567.

Anent teindis of beneficis.

C. I. He quha cauſis inhibitioun to be ſervit, is underſtuid thairby to obtene poſſeſſioun.

GIF ony ſpirituall perſoun, being providit to ony perſonage, vicarage, penſioun, or uther eccleſiaſticall functioun, dewlie makis and executis inhibitioun in his name, aganis the parochinaris, or uther perſounis, quha ſould mak payment to him of ony teindis or uther dewteis, he is underſtuid to cum in lauchfull poſſeſſioun of his perſonage, vicarage, penſioun, or uther dewtie, be making and executing

ecuting of the ſaid inhibitioun. 12 *Decemb.* 1566, Archibald Keyth *contra* M. John Eldar, 1 *t. c.* 852.

C. II. Quhairof the teindis ſould be payit.

TEINDIS ſould be payit to the Vicar, of lamb, woll, cheiſe, geis, gryſe, lint, hemp. 24 *Julij*, 1561, *Subchantor of* Murray contra *parochineris of* Forgundeny, 1 *t. c.* 1261.

C. III. The ſecund teindis pertenis to the Prelatis.

THE teind penie of all wairdis, mariagis, releifis, maillis, fermis, eſchetis, or iſcheis of courtis, may pertene to Biſchoppis and Abbotis ſpeciallie infeft thairintill. John *Duke of* Albanie, 20 *Junij*, 1515. *Ja.* II. 1 *Septemb.* 1451, 2 *t. c.* 346.

ITEM, Ane Biſchop, or uther eccleſiaſticall perſoun, being infeft in the ſecund teindis of ony landis, haldin be ſervice of ward and releif, to wit the tent penie of all wardis and releifis, gif ony of the ſaidis landis be eſterwart diſponit, to be haldin in blanche ferme, the ſame ſall not prejudge the ſaid Biſchop, or uther eccleſiaſticall perſoun, of the tent penie, to be tane up of the ſaidis landis: Becauſe the ſamin aucht to have fallin in ward, gif thay wer not preſentlie haldin in blanche, in reſpect of the laſt infeftment of blanche ferme; ſeing the ſaid Biſchop was firſt infeft in the ſaidis ſecund teindis the time that the ſaidis landis wer haldin be ſervice of ward and releif, as ſaid is; and thairfoir his infeftment aucht and ſould on na wayis be prejudgit be ony infeftment of blanche ferme grantit and obtenit thairefter: Providing that the Ladyis tiercearis for the time, gif ony be, thair part be defalkit, deducit, and maid fré fra payment of the ſaidis ſecund teindis. 6 *Maij*, 1491, *The Biſchop of* Aberdene *contra Lord* Forbes. 1 *Martij*, ——— *The Biſchop of* Aberdene *contra the Laird of* Pitſligo, 1 *t. c.* 68.

C. IV. Quhairof teindis ſould not be payit.

NA teindis ſould be payit for landis beand the gleib of ony vicarage, perſonage or benefice. 16 *Decemb.* 1563, *the Deane of* Glaſgow *contra the parochineris thairof*, 1 *t. c.* 1307.

C. V. Ordour of the requiring of teindis.

GIF ony man quhilk ſould pay his teind to ane uther havand richt and titill thairto, fearis to intromet with the ſamin at his awin hand, ather be reſſoun of na inhibitioun being ſervit aganis him, and he intromettand thairwith, may be callit for wrangous intromiſſioun; or ellis, inhibitioun being lauchfullie ſervit aganis him, he may be perſewit for ſpuilzie of the ſamin: He may cauſe warn the perſoun havand richt to the ſaidis teindis at the paroche kirk in time of divine ſervice, within the quhilk parochin the teindis and the landis lyis, to cum at a certane day, or dayis, and teind the cornis that grew upon his landis: And gif he, nor nane in his name, cumis at the day or dayis appointit, he that maid the requiſitioun for ſaiftie of his awin cornis, may cauſe twa or thré of his nichtbouris, famous and unſuſpect men, cum and juſtlie teind the ſamin, and thairefter leid and ſtak the teindis upon the ground of the landis quhair thay grew, and dike and park the ſamin ſurelie, and keip thame ſikkerlie, quhill the firſt day of *November*, callit *Allhallowmas*, nixt and immediatlie followand the collecting thairof; the quhilk gif he dois, he on na wayis may be callit or perſewit efterwart for the wrangous intromiſſioun, or for ſpuilzie of the ſaidis tendis,

quhatever becum of the ſamin. 22 *Novemb.* 1555, *Sir* William Ballingall *contra M.* William Arthur. 11 *Feb.* 1557. 3 *Decemb.* 1558, *The auld College of* Sanctandrois *contra the Laird of* Monquhany. 2 *Maij*, 1564, *M.* Thomas Methven *contra the Laird of* Kinkell. 4 *Maij*, 1558, *The Perſoun of* Lauder *contra* Thomas Louthian, 1 *t. c.* 747.

C. VI. Of impediment maid in teinding.

GIF ony man, within quhais boundis or landis teindis pertening to ony uther man is gadderit or ſtakkit, makis impediment, or ſtoppis him and his ſervandis, and will not ſuffer thame nouther to thraſh thair teindis quhair thay ſtand, nor in ony barne within his boundis, nor zit to leid and cary thame away to ane uther manis landis; he aucht and ſould (the ſamin beand provin ſufficientlie) to content and pay the hieſt prices of ſic victuallis, as thay war ſauld in the mercat ſen the time of the making of the ſaid impediment. 17 *Julij*, 1532, *M.* Charles Fotheringhame *contra* David Lindſay.

C. VII. Periſht cornis pay no teindis.

WEIR ſtandand betwixt this realme and *Ingland*, and the cornis of the bordouris beand ſchorne and ſtoukit, and the awneris thairof dar not leid nor put the ſamin in the barn zaird, for fear of burning thairof be the enemeis, gif the ſamin periſh and rot for the maiſt part upon the fieldis, the tenentis awneris ſould not be compellit to pay teind for the ſamin, 29 *Julij*, 1563, *The Chaptour of* Glaſgow *contra the Laird of* Ceſturde, 1 *t. c.* 1035.

C. VIII. Nor thoſe deſtroyit by maiſterful force.

GIF ony perſoun be debt-bund, or obliſt to ane uther for payment of his teindis, he ſall not be compellit to pay the ſamin, or ony part thairof, gif the cornis that grew upon the ground wer deſtroyit, waiſtit or conſumit be force or violence, to the quhilk he wes not hable to reſiſt, being ane hoſt, armie or multitude of men, 19 *Decemb.* 1549, *Abbot of* Halyrudhous *contra M.* John Monypenie: Or gif the landis wer lyand waiſt be the deceis of his tenentis labouraris thairof, quha wes ather ſlane be the enemie, or deceiſt be the peſtilence; or gif ony multitude or armie, not beand enemeis bot confederatis of this realme, or of our ſoverane Ladyis awin liegis, eates, be oppin force and violence, cornis, or deſtroyis, reivis and takis away the ſamin cornis. 20 *Jan.* 1549, *Abbot of* Halyruidhous *contra the Laird of* Inverleith, 1 *t. c.* 686.

Anent preſcriptioun.

C. I. That all ſummoundis of errour be perſewit within thré zeiris.

IT is ſtatute and ordanit, that all ſummoundis of errour or inordinat proces, that ar to be raſit be ony perſounis that thinkis thame hurt be the determinatioun of inqueiſtis, or be proces of Schireffis, led in the ſerving of brevis in time to cum, be raſit and perſewit within the ſpace of thré zeiris, efter the leding of the ſaid proces and making of retouris; the parteis that alledgis thame hurt being of lauchfull age, and within the realme; ſwa that the errour and inordinat proces micht cum to thair eiris. And gif ony perſounis omittis to rais ſic ſummoundis, and perſewis thame not within the ſaid termis, the ſaid termis being paſt, thay ſall never be heard in judgment upon that actioun thairefter, bot ſall tyne thair privilege of reductioun

oun of the ſaid proces and errour for all time to cum: Nevertheles the ſummoundis that ar now dependand and hingand betwix ony parteis, to be procedit as thay war wont: And quhair that ony perſounis thinkis thame hurt, be retouris, or proces, that ar els led and maid in time bygane, that thay rais ſummoundis thairupon within the ſpace of thré zeiris, and perſew the ſamin, and failzeing thairof, that thay be never hard in judgment as ſaid is, bot to tyne thair privilege of reductioun in all times to cum, *Ja.* IV. *fol.* 102. *cap.* 90. 13 *Junij*, 1594. The act of parliament maid anent reductioun of retouris and inordinat proces, aucht and ſould have ſtrenth, force and effect betwix partie and partie, and on na wayis bindis and obliſſis the King thairto; becauſe thair rins na preſcriptioun aganis the King; the quhilk privilege aucht and ſould be extendit in favouris of the Quene dowariar, or conjunct-fear for the time, 10 *Julij*, 1545, *Quene* contra *Laird of* Drumlargall. 25 *Feb.* 1502, *The King* contra Alexander *Erle of* Buchane. 19 *Decemb.* 1531, *The Laird of* Innes *contra L.* Finlater.

C. II. Difference betwix compryſit landis and wodſet landis.

REDEMPTIOUN of compryſit landis may be callit and perſewit be ane bill, or ſupplicatioun, and requiris not at all times ane peremptour ſummoundis, quhilk is neceſſary in redemptioun of uther landis; becauſe redemptioun of compryſit landis hes ane uther nature nor landis under reverſioun, be reſſoun that compryſit landis expiris and preſcryvis ſevin zeiris being bypaſt; bot landis annalzeit under reverſioun preſcryvis nevir. 4 *Maij*, 1540, Helene Rutherfurd *contra* Williame Jackſon, 1 *t. c.* 507.

C. III. Preſcriptioun in reductioun of decretis.

GIF ony perſoun wald rais or intent ſummoundis for reductioun of ony decrete or ſentence gevin be ony Judge aganis him or ony of his predeceſſouris, he aucht and ſould do the ſamin within the ſpace of threttie zeiris efter the geving thairof; utherwayis he, his airis and ſucceſſouris, ſall be ſecludit fra all reductioun thairof in all time cuming. *Pen. Mart.* 1531, 1 *t. c.* 333.

C. IV.

OBLIGATIOUNIS perſonall ſould be perſewit within fortie zeiris. *Ja.* III. *fol.* 52. *act.* 36. 20 *Novemb.* 1469. *Ja.* III. *fol.* 58. *act.* 67. 9 *Maij*, 1474.

C. V. It is ſufficient gif the ſummoundis be execute befoir the iſhe of the time.

IN all preſcriptiounis, quhilk be the law of this realme hes courſe aganis ony ſummoundis, actioun or cauſe, gif the ſummoundis be raſit and execute within the time of the preſcriptioun, and befoir the time be compleitlie outrun, the ſamin is ſufficient, and aucht and ſould have proces, notwithſtanding ony preſcriptioun alledgit in the contrare. *Ult. Julij*, 1518, *The King, and* Alexander Innes *of that ilk*, contra Robert Innes *of* Invermarkie. 1 *Decemb.* 1524, Archibald *Erle* Angus *contra N.* 1 *t. c.* 365.

C. VI. Of the title cum to the perſewaris knawlege efter the preſcriptioun.

GIF ony perſoun callis and perſewis ane uther for reductioun of ane retour, or for ony uther actioun or cauſe, in the quhilk preſcriptioun, be the law of this realme, micht have courſe or place; and the defendar alledge that he hes na intres to perſew, becauſe the actioun and perſute thairof is preſcryvit be the law; zit nevirtheles he ſall be heard to perſew, gif he alledge, be way of reply, and prove

prove ſufficientlie, that efter the iſche and end of the time of the ſaid preſcriptioun he obtenit the knawledge of his richt and titill in the ſaid cauſe, or gat his evidentis and richtis concerning the ſamin; for in this cais na preſcriptioun ſould have place or courſe befoir the obtening of the ſaid richt and title, bot efter the obtening thairof ſould begin to have courſe, and to rin, in reſpect that the perſewar in the mean time knew not his richt and intres. *Et contra ignorantem, aut non valentem agere, nulla poteſt currere præſcriptio.* 21 *Mart.* 1549. 28 *Junij*, 1550, Petre Wincheſter *contra* Pat. Dumbar, 1 *t. c.* 688.

C. VII. PRESCRIPTIOUN in cauſis of ſpuilzeis and ejectiounis. *Ja.* VI. *fol.* 12. *act.* 15. 20 *Octob.* 1579.

C. VIII. PRESCRIPTIOUN in cauſis of removing. *Ja.* VI. *fol.* 13. *act.* 16. 20 *Octob.* 1579.

C. IX. PRESCRIPTIOUN in certane cauſis of debt. *Ja.* VI. *fol.* 13. *act.* 17. 20 *Octob.* 1579.

C. X. THE act of oblivioun. *Mar. R. fol.* 170. *act.* 1. 4 *Junij*, 1563.

Anent poſſeſſioun.

C. I. Na man ſould be put out of his poſſeſſioun bot be ordour of law.

ANE man beand be the ſpace of ten zeiris, or ane langer time, in uſe and poſſeſſioun of ony annuelrent or dewtie to be uplift out of ony landis or tenementis, or ony uther thing, he aucht and ſould bruik and joiſe the ſamin, and be mantenit in his poſſeſſioun foirſaid, ay and quhill he be lauchfullie callit, and ordourlie put thairfra be the law. 18 *Novemb.* 1503, *The Provinciall of the* Black-frieris *contra* Williame Bervick, *t.* 1. *c.* 250.

C. II. Revocatioun of poſſeſſioun gevin be tollerance.

POSSESSIO precaria gevin be tolerance, may be revokit, ſtoppit, or interruptit be him that gave or grantit the ſamin, quhen and in quhat leaſum maner he pleaſis. 24 *Julij*, 1550, 1 *t. c.* 1120.

C III. Of clandeſtine poſſeſſioun.

CLANDESTINA poſſeſſio, quhilk is obtenit privilie and covertlie, ſould not be callit poſſeſſioun, and thairfoir the ſamin may not ſtop nor mak ony interruptioun in ony trew, reall or naturall poſſeſſioun. 24 *Mart.* 1546, 9 *Julij*, 1547, 1 *t. c.* 70.

C. IV. The obteinar of removing lauchfull poſſeſſour.

GIF decreit of removing be gevin aganis ane, decernand him to deſiſt and ceis fra the poſſeſſioun of ony landis, and he nevertheles dois not the ſamin, he in quhais favouris the ſaid decreit is gevin, is underſtuid to be in lauchfull poſſeſſioun of the ſaidis landis; and he aganis quhome the ſaid decreit is gevin, on na wayis to be in lauchfull poſſeſſioun thairof. 7 *Martij*, 1541, *The Lady Faſcaſtell* contra *the L. of* Blanerne, 2 *t. c.* 70.

C. V. *De eo qui dolo deſiit poſſidere.*

GIF ony perſoun perſew ane uther for gudis, geir, or ony uther thing quhilk was ſumtime in his poſſeſſioun, and quhilk he hes fraudfullie

fullie abſentit and put away, he may be callit and perſewit like as gif the ſamin wer preſentlie in his poſſeſſioun; *quia qui dolo deſiit poſſidere, pro poſſeſſore habetur.* 6 *Octob.* 1531, David Vallange *contra* Williame Scot, 1 *t. c.* 320.

C. VI. Of the poſſeſſioun of landis in communtie.

GIF ony man have landis pertening to him in communtie, and is in poſſeſſioun thairof, be vertue of the ſamin he may ſtop all uther perſounis within the boundis of his communtie, to big ony houſe, fauld, dyke, or do ony uther deid tending to the appropriating of the ſaidis landis to thame: And gif ony thing be done or biggit in the contrare, the ſame may be deſtroyit and caſtin down leaſumlie. 6 *Maij*, 1542, *The Lord* Zeſter *contra the Lord* Arrane, 1 *t. c.* 978.

C. VII. Anent poſſeſſioun of the ſervitude of caſting of fewall.

GIF ony man callis and perſewis ane uther for caſting, leiding, or away-taking of peittis, or ony uther fewall, off ony landis or ground pertening to him in heritage, and the defendar alledge, that albeit he had caſtin and intromettit with the ſamin, he did na wrang, becauſe he and his tenentis had bene of befoir, and zit is in poſſeſſioun of the ſamin ground, as part and pertinentis of uther landis pertening to him in heritage and devydit fra the perſewaris landis be ane certane marche, be paſturing of gudis thairupon, and winning of fewall, and poinding of utheris cuming thairon; the ſamin is relevant of the law, and a certane terme is aſſignit to baith the parties, *viz.* to the perſewar for proving of his ſummoundis, and to the defendar for proving of his alledgance. 27 *Junij*, 1559, Alexander Forbes *of* Pitſligo *contra* Alexander Leſlie *of* Wardis, 1 *t. c.* 775.

C. VIII. Of him quha ſpuilzeis ane uther man of his poſſeſſioun.

GIF ony man being in poſſeſſioun of ony landis, miln, or ony uther immoveabill gudis, be ane certane time and ſpace, (albeit the ſamin be only be way of deid, and without ane title) be vexit, troublit or ſpulzeit of his ſaid poſſeſſioun; the ſpuilzear is not onlie haldin to reſtore him to his poſſeſſioun agane, and to deſiſt and ceis fra all troubling and moleſting him thairintill, utherwayis than law will, in all time cuming; bot alſo he aucht and ſould pay the coiſt, damnage and expenſis, ſa far as he that was troublit and ſpuilzeit can ſufficientlie prove that he hes ſuſtenit thairthrow. 2 *Maij*, 1499, Johne Fentoun *contra* Williame Simpſone, 1 *t. c.* 85.

ITEM, In all ſummoundis of ſpulzie of ony gudis and geir, poſſeſſioun beand libellit be vertue of ane titill, the titill aucht to be producit. 17 *Decemb.* 1550.

ITEM, All ſummoundis of teindis, poſſeſſioun beand libellit as ane part of the patrimonie of the benefice, it is ſufficient to produce inhibitioun for verifying of the titill. 17 *Decemb.* 1550.

Of obligatioun.

C. I. Quhat is ane obligatioun, and of the ſpeciall punctis thairof.

OBLIGATIOUN is ane band of the law, be the quhilk a man is bund be reſſoun of ony debt or contract, *De obligat. c.* 14. *Item*, Ane obligatioun ſould contene ſax principall partis and punctis, quhairof gif ony ane failzeis, the reſt is of nane availl, force nor effect: 1. His name and ſirname quha makis the obligatioun. 2. His name

and ſirname to quhome it is maid. 3. The thing quhairfoir it is maid, and quhat it is, and how mekle it extendis to. 4. The cauſe quhairfoir the obligatioun is maid, *viz.* for buying, ſelling, lending, borrowing, or ony uther reſſonabill cauſis. 5. The place and terme of payment. 6. Securitie for fulfilling of the premiſſis, and alſo for payment to be maid, als weill of the principall thing or ſowme contenit in the ſaid obligatioun, as of the intereſt, coſtis and ſkaithis that ſall happin to be maid throw non-payment thairof. *Item*, Sum ar of opinion, that ane obligatioun ſould contene ane pane to be upliftit fra him that is obliſt, in cais of his failzie, be the Judge, under quhais juriſdictioun he dwellis. *De obligat. c.* 13.

C. II. For quhat thing a man may be obliſt, or not.

ITEM, It is leaſum to ony man to bind or obliſs his gudis and geir, preſent or to cum, or the fruitis of the ground pertenand to him, and zit beand thairupon. *Item*, Gudis or geir corporall, as horſe, or incorporall, as obligatiounis of debtis, weddis or liferentis, *De oblig. c.* 7. It is not leaſum to ony man to bind, obliſs, or annalzie ony place of buriall of menis bodies, the kirk or ornamentis thairof, except the ſamin be done for an urgent neceſſitie. *De oblig. c.* 8.

C. III. He that is obliſt ſould performe, utherwayis to refound the gude deid reſſavit be him.

GIF ony Procurator, Mediciner, Chirurgeon, or uther perſoun quhatſumever, obliſſis himſelf to do ony gude deid, as to win and obtene his clientis cauſe, or to cure and haill his patient, and reſſavis ony ſowme of money, or gude deid thairfoir, and failzeis in doing that quhilk he promiſit to do, he aucht and ſould reſtore and deliver agane all commoditeis reſſavit be him thairfoir. 13 *Mart.* 1506, Johne Kennedie *of* Blairquhane *contra* Alexander Kennedie *Doctor of medicine*, 1 *t. c.* 207.

C. IV. The pane conventuall may be askit with the principall ſoume.

GIF ony man obliſſis him to content and pay to ane uther ony certane ſowme of ſilver, or uther money, at ane certane term or dyet convenient betwix thame, and contenit in the obligatioun, under the pane of double payment of the ſaid ſowme, gif he failzeis to mak payment of the ſamin, efter the tenour of the ſaid obligatioun, and at the day or termis to the quhilk he obliſt himſelf, he may be callit be his creditour to heir him decernit be ane Judge, to content and pay the ſaid principall ſowme, togidder with the double thairof, *viz.* als mekle agane as the ſame ſowme extendis to; becauſe he failzeit, as ſaid is, to mak payment at the day appointit. 5 *Julij*, 1501, *The Laird of* Cokpuil *contra* Symon Carutheris *of* Mouſwall. 26 *Feb.* 1506, *The Kingis Theſaurar* contra *the Erle of* Cathnes.

C. V. The payment of the pane ſtoppis not the payment of the principall debt.

GIF ony man be obliſt to ane uther for to do him ony gude deid, or to give him a ſowme of money at a certane day, with ſpeciall proviſioun that gif he failzeis to mak payment thairof at the day convenit upon, he ſall pay to him, in name of pane, ſum certane ſowme of money, gif it be fundin and provin efterwart that he hes failzeit, and ſwa incurrit the ſaid pane, and thairfoir is decernit be decreit of ane Judge to pay the ſamin; zit nevertheles he may be callit and convenit thairefter, for to heir and ſé him decernit to mak payment of the ſaid principall ſowme or debt contenit in the ſaid obli-

obligatioun. 19 *Julij*, 1502, Hector Bruce *of* Colpmalundie *contra the Lord* Lindſay, 1 *t. c.* 129.

C. VI. [Quhen pane conventionall may be askit.

BE the law of this realme, *pœna conventionalis*, ſic as ane ſowme of money adjectit, with conſent of parties, in ony contract or obligatioun, in name of pane, may not be askit be ony perſoun, bot in ſa far as he is intereſtit, hurt or ſkaithit; becauſe all ſic panis are in ane maner uſurarie, and unhoneſt, maid for lucre or gane, except onlie in bandis gevin for deliverie and re-entrie of ony enemie of this realme takin priſoner; for gif he that gives the band failzeis to deliver the priſoner conforme thairto, he ſould be compellit to pay the pane preciſelie, notwithſtanding that he offer payment for the intereſt and ſkaith ſuſtenit be the partie throw wanting of the priſoner: The quhilk is ordanit and conſtitute for haitrent of the enemies of this realme, and in favour of the commoun weill of the ſamin. 22 *Mart.* 1548, George Home *contra* Johne Hepburne. 29 *Julij*, 1566, *inter eaſdem perſonas*, 2 *t. c.* 207.

C. VII. The laſt obligatioun makis the firſt null.

GIF ony man be obliſt to ane uther, to content and pay to him ane ſowme of money, *viz.* vi. hundred pundis, for ane certane cauſe contenit and expremit in the obligatioun, and thairefter mak ane new band and appointment, obligeand him, for the ſamin cauſe, to content and pay to him ane leſſe ſowme, *viz.* 1 hundred pundis; the firſt obligatioun is expyrit and annullit, *jure novationis*, be reſſoun of the making of the laſt: And thairfoir the debtour may not be callit nor perſewit, bot for the contentis of the laſt obligatioun allanerlie, *viz.* 100 *l.* 14 *Maij*, 1549, Olivare Sinclare *contra Lord* Seytoun, 1 *t. c.* 677.

C. VIII. *Interventu novæ perſonæ ceſſat obligatio prima.*

GIF ane debt be auchtand be ony perſoun to ane uther, and the creditour thairefter takis and reſſavis ane uther man ſovertie and principall debtour, for all debtis betwix the ſaid debtour and him, he may never efter call nor perſew the firſt debtour thairfoir; becauſe of the law of this realme he is underſtuid to have paſt fra him, and diſchargit all actiounis of debt, quhilk he micht have had aganis him. 29 *Mart.* 1561, *M.* David Henryſone *contra the Laird* of Roſſie, 1 *t. c.* 785.

C. IX. Ane decreit arbitrall makis innovatioun to the decreit of a Judge.

GIF ane decreit be gevin aganis ony perſoun, and thairefter he and his partie compromittis in ony arbitrall, this innovatis na mair of the ſaid decreit nor is contenit be expreſs and ſpeciall wordis and clauſis in the ſaid decreit arbitrall: And thairfoir executioun ſould paſs and have place upon ſa mekle of the ſaid decreit judiciall as is not ſpeciallie expremit in the foirſaid decreit arbitrall. 19 *Novemb.* 1569, Johne Dumbar *contra* Johne Hay, 1 *t. c.* 1369.

C. X. Diſcharge maid in captivitie is null.

DISCHARGE of ony debt, ſowmis of money, or obligatioun maid be ony perſoun beand in captivitie or priſoun, is null be way of exceptioun. 4 *Julij*, 1555, Marion Craig *contra* James Mowat.

ANENT the ſubſcriptioun and inſerting of witneſſis in obligatiounis, and utheris writtis of importance. *Vid. Ja.* VI. *fol.* 12. *act.* 14. 20 *Octob.* 1579.

Anent

Anent payment.

C. I. Of payment maid *bona fide.*

PAYMENT maid of ony debt or dewtie be ony man, *bona fide*, to ane uther, is ſufficient, and releivis the maker thairof at all handis, havand or pretendand to have intres thairto, 4 *Junij*, 1540, 1 *t. c.* 1096. *Item*, Payment of ony maillis, or uther dewteis, maid to ony perſoun, quha hes committit ony crime for the quhilk he may be foirfaltit befoir the ſentence and declarator of forefaltour gevin and pronuncit aganis him in parliament, is ſufficient and underſtuid to be maid *bona fide*: And thairfoir the maker thairof may not be compellit to mak payment agane of the ſamin to ony perſoun. 24 *Maij*, 1555, *Abbot of* Balmerinoch *contra* Durhame *of* Grange, 2 *t. c.* 256.

C. II. Payment of ane part to the creditour, and of the reſt to utheris in his name.

PAYMENT maid be the debtour, or ony in his name, of a part of the debt to the creditour himſelf, and of the reſt of the debt to utheris in his name, havand ſufficient powar of him to reſſave the ſamin, or zit, efter the creditouris deceis, to his executouris, (na intimatioun beand maid to the debtour in the contrare) the ſamin is ſufficient, and releivis and keipis ſkaithles the maker thairof, at the handis of the creditour, his airis or ſucceſſouris. 20 *Novemb.* 1554, Jone Zoung *Writer*, contra *the Laird of* Eiſter Wemys, 1 *t. c.* 1179.

C. III. He that makis payment in ane utheris name ſould be releivit.

GIF ony man, in the name and behalf of ane uther, or at his requeiſt or command, contentis and payis ane debt to ony perſoun, he aucht and ſould be releivit and kept ſkaithles thairanent be him in quhais name he payit the ſamin. 19 *Decemb.* 1527, Williame *Lord* Sempill *contra* Johne Mouat *of* Buſbie, 1 *t. c.* 337.

C. IV. The price of the debt may be askit for the debt itſelf.

GIF the gudis and geir auchtand be the debtour happinis to be tint, and periſh, ſwa that the ſamin is na mair *in rerum natura*, it is leaſum to the creditour to ask and crave the juſt price and eſtimatioun of the ſaid debt; *quia ſi res debita deſierit eſſe in rerum natura, ejus loco pretium peti poteſt.* 22 *April.* 1555. *M.* Johne Arnote *contra* Robert Milne, 1 *t. c.* 1193.

C. V. Payment maid be the debtour to ony in the creditouris name.

PAYMENT maid be the debtour to ony perſoun in the creditouris name, of debt auchtand be him, is ſufficient to ſave him at the creditouris handis fra making of ony farder payment thairof, gif he prove ſufficientlie that the ſamin was convertit and turnit to the uſe and proffeit of the principall creditour, and his will to reſſave the ſamin, albeit that he to quhome the payment was maid had na mandat nor powar fra the principall debtour to reſſave the ſamin fra the ſaid neutrall. 23 *Maij*, 1542, *The King* contra *the burgh of* Edinburgh, 2 *t. c.* 96.

C. VI. Payment of a part offerrit.

THE creditour may not be compellit to reſſave a part of the debt auchtand to him; and gif the debtour offerris not the haill debt, bot a part allanerlie, the ſaid offer is not ſufficient. 27 *Julij*, 1546, 2 *t. c.* 165.

THE

C. VII. The Lord of the ground is preferrit to all uther crediteuris.

THE maillis, fermis and dewteis of ony landis aucht and ſould be firſt payit be the tenent to his maiſter, befoir the making of payment of ony uther debtis auchtand be the tenent to ony uther creditouris, to quhome the Lord of the ground aucht and ſould be preferrit: And gif ony creditour hes obtenit ane decreit aganis the tenent, and be vertue thairof hes cauſit arreiſt his gudis and geir beand upon the ſaid Lordis ground, the ſaid arreſtment aucht to be louſit be ane Judge at the inſtance of the Lord of the ground, deſirand the ſamin to ceis untill he be completelie payit of the maillis and dewteis auchtand to him. 20 *Septemb.* 1546, 2 *t. c.* 168.

C. VIII. Anent confeſſioun of debt maid in a latter will.

GIF ony man in his teſtament and latter will confeſſis ane certane ſowme of money to be auchtand to him be ony debtour, the debtour may not be compellit to pay ony mair nor is contenit in the ſaid teſtament, notwithſtanding that he be obliſt for a greater ſowme befoir the day and dait of the ſaid teſtament; becauſe the latter will is prejudiciall and derogative to the obligatioun preceding the ſamin. 14 *Novemb.* 1561, *The executour of M.* Thomas Marjoribankis *contra* Luke Watſone, 2 *t. c.* 280.

C. IX. Of him quha takis the debtour out of ward, without conſent of the creditour.

ANE man beand arreſtit and put in ward at the inſtance of his creditour, gif ony uther perſoun thairefter cum, and be force tak him out of the ſaid ward, he ſall be haldin to reſtore the debtour agane within the ſaid ward, within the ſpace of xv. dayis at the fartheſt, havand and worth als mekle gudis as he was worth the day that he was arreſtit and put in ward; and failzeing thairof, the ſaid perſoun ſall be haldin to content and pay to the creditour the ſowmis of money and debtis for the quhilkis the ſaid debtour was arreiſtit and put in ward. 17 *Maij*, 1469, Williame Galloway *contra* Walter Burne, 1 *t. c.* 1.

C. X. Acquittance for all times bypaſt.

GIF ony man, perſewit for ony ſowmis of money, produce ane ſufficient acquittance, quhairin the perſewar grantis him to have reſſavit ane certane ſowme of money, in haill and compleit payment of all termis bygane, he may not be callit nor perſewit for ony ſowme auchtand befoir the day and date of the ſaid acquittance, 28 *Januar.* 1556, *The Priour of* Pluſcardine *contra* Johne Otterburne, 1 *t. c.* 1205. Gif ony man be callit and perſewit for ony maillis, proffeitis and dewteis of ony landis alledgit auchtand be him for divers and ſindrie termis and zeiris, and producis ane ſufficient acquittance for ony ane terme, and of all uther termis befoir the day and dait thairof, he on na wayis aucht and ſould be compellit to mak payment of the ſaidis dewteis for the ſaid term contenit in the ſaid acquittance, nor of ony uther term or termis precedand the dait of the ſamin. 5 *Novemb.* 1500, *M.* Williame Oliphant *contra* Robert Bondle, 1 *t. c.* 184.

C. XI. Of acquittance of thré zeiris.

GIF ane debtour, being callit and perſewit for to mak payment of ony debtis auchtand be him for divers and ſindrie zeiris, ſchawis thré ſindrie acquittances, or diſcharges thairof, of thré ſindrie zeiris, continuallie and immediatlie followand the ane efter the uther, he aucht and ſould be *ſimpliciter* aſſoilzeit for the ſaid thré zeiris. and alſo for all termis preceding the ſaid thré zeiris. 11 *Feb.* 1554,

 M. George

M. George Foreſtare's *wife* contra *the Laird of* Drydane, 2 *t. c.* 255.

C. XII. Anent payment maid to ane Chalmerlane.

ANE Chalmerlane, or Factour, maid be ony man, reſſavand payment, or intromettand with maillis and dewteis as Factour or Chalmerlane, efter his deceis be quhome he was maid and conſtitute, may not be callit for ſpuilzie, or wrangous intromiſſioun thairwith, be ony perſoun havand intres thairto, ſa lang as he is not diſchargit of his office of chalmerlanrie or factorie. 13 *April*, 1563, *Lady* Darnlie *contra* James Steuart, 1 *t. c.* 1327.

C. XIII. Letteris of *ſuperſedere*, and of him that hes powar to grant the ſamin.

GIF ony perſoun becumis pure, for ane honeſt, pitiefull or favorabill cauſe, as gif he be takin priſoner, and ranſomit, be the enemies of the realme, or be piratis, or zet be ſpuilzeit be reivaris or theifis, and thairfoir deſires letteris of ſuſpenſioun or *ſuperſedere* to be gevin and grantit him aganis his creditouris; the Lordis of counſall and ſeſſioun hes na powar to grant the ſamin, becauſe that pertenis to the King be reſſoun of his office and authoritie royall. 9 *Julij*, 1501, Johne Baxter *contra N. deſirer of the letteris.*

C. XIV. The maner how a bairman ſould mak ceſſioun of his gudis.

GIF ony man, beand bair-man or dyvour, wald mak ceſſioun or aſſignatioun of his gudis and geir, in favouris of his creditouris, he ſall ſweare and mak faith in judgment, that he hes not in gudis and geir the valour of v *s.* iiij. *d.* and fra that day furth he ſall not withald nor retene to himſelf of his lucre or gaine that he ſall happin to purches or win in ony time thairefter, untill the debt be compleitlie payit, bot allanerlie ij. penies ilk day for his meit and claith, and that he ſall give ilk thrid penie to his creditouris for payment of his debt: And alſo he ſall ſweare, that gif thairefter he happinis to be rich, he ſall do to his creditouris that quhilk is conform to law and reſſoun; and he ſall to that effect find pledgis and ſoverties, gif ony he may find or have: Or gif he purches and conqueis riches at ony time efter the making of the ſaid ceſſioun, and thairefter fall in the ſamin eſtait, that it behoves him to mak of new ceſſioun and aſſignatioun of all his gudis in maner abone ſpecifeit, he ſall be exylit and baniſt furth of the realme. *Leg. burg. c.* 144. *Quoniam attach. c.* 2.

C. XV. THE Kingis money allanerlie to be reſſavit in payment. *Ja.* III. *fol.* 55. *act.* 51. 20 *Novemb.* 1469. *Ja.* III. *fol.* 50. *act.* 26. 12 *Jan.* 1467.

C. XVI. THE maner of debtis and contractis paying. *Ja.* III. *fol.* 49. *act.* 23. 12 *Octob.* 1467.

ANENT debtis and obligatiounis. *Ja.* II. *fol.* 33. *act.* 38. 25 *Octob.* 1451.

OF the payment betwix the debtour and creditour. *Ja.* III. *fol.* 61. *act.* 84. 20 *Novemb.* 1475.

Of generall diſcharge.

C. I. Generall diſcharge of all ſowmis of money, and all uther actiounis.

GIF ony perſounis quit clamis, and diſchargis ilk ane utheris of all ſowmis of money, queſtiounis, gudis and geir, and of all uther actiounis quhatſumever betwix thame, unto the day and dait of the ſaid diſcharge; nane of thame may call utheris for the ſpuilzie of ony ky, nolt, horſe, gold, money, or for making of impediment to win coillis, peitis, turvis, or uther fewall, gif the ſamin was committit and done befoir the making of the ſaid generall diſcharge. 26 *Maij*, 1533, Johne Maxwell *contra Laird of* Dalhouſſie, 1 *t. c.* 425.

C. II. Generall diſcharge of all debaitis.

GIF ony perſounis diſchargis utheris be ane compromit and decreit arbitrall followand thairupon, or utherwayis, of all debaitis, that is, or may be betwix thame, for ony cauſis precedand the day of the diſcharge; nane of thame may perſew utheris efterwart for ſpuilzie of ony gudis, geir, cornis, proffeitis of landis, orchardis, medowis, deſtroying or cutting of tries, ejectioun, or with-halding of utheris gudis and geir, committit and done befoir the ſaid generall diſcharge. 6 *Julij*, 1534, Jonet Langmure *contra* Robert Cunynghame, 1 *t. c.* 458.

C. III. Generall diſcharge of all immoveabill gudis.

GIF ony perſoun gevis ane generall diſcharge to ane uther, of all gudis immoveabill auchtand to him, he may never efterwart be heard to call and perſew him to quhome the ſaid diſcharge is gevin, for infeftment of landis to be gevin to him be reſſoun of ony contract or obligatioun quhilk was maid be him to that effect befoir the day and dait of the ſaid generall diſcharge. 27 *Junij*, 1534, George Montgomerie *contra the Laird of* Dalzell, 1 *t. c.* 916.

C. IV. Generall diſcharge of all reverſiounis.

GIF ony man diſchargis, renuncis, and quyt clamis generallie all reverſiounis pertening to him, the ſamin diſcharge is extendit to, and takis away all ſpeciall reverſiounis pertening to him the time of the making of the ſaid generall diſcharge. *Ult. Julij*, 1557, Johne Cargill *contra* Thomas Lindſay, 1 *t. c.* 1212.

C. V. Generall diſcharge of all infeftmentis, richtis, titillis, and evidentis.

GIF ony perſoun takis new infeftment of his landis, and at the ſamin time renuncis and paſſis fra all uther infeftmentis, richt, titill, or evidentis maid to him of the ſaidis landis of befoir, he, nor his airis, ſall not be heard in time cuming to clame ony richt, or uſe ony infeftment or evident of tailzie, or uther quhatſumever, of the ſaidis landis, maid befoir the day and time of the ſaid generall renunciatioun and diſcharge. 18 *Jan.* 1564, Donald Cambell *contra M.* Ja. Levingſtoun, 1 *t. c.* 1020.

C. VI. Generall diſcharge maid to ony man and his ſervandis.

GIF ony man obliſſis him never to call nor perſew ane uther man, nor his ſervandis, in ony actioun or cauſe, and quytis and diſchargis him and thame thairof in all time cuming, he ſall not be heard efterwart to perſew ony man in ſpeciall, that was ſervand to him quha was diſchargit the time of the making of the ſaid generall diſ-

diſcharge. 9 *Julij*, 1557, James Edmonſtoun *contra* Pat. Steuart, 1 *t. c.* 1207.

C. VII. How far a generall diſcharge extendis, and of ſpecialities contenit under the ſamin.

ANE generall clauſe or diſcharge ſould be extendit to all thingis not expreſſit ſpeciallie, the quhilk naturallie and properlie may be comprehendit under the ſamin; and the ſamin may comprehend thingis of greater conſequens and valour than the thingis ſpeciallie expremit, gif thair be na uther thing *præter illud majus in quo poteſt operari. Ult. Julij*, 1546, 2 *t. c.* 166.

Of alienatioun and infeftment.

C. I. He that is not ſeaſit may not annalzie.

ALL alienatiounis and diſpoſitiounis of ony landis or tenement is maid be the ſone ſuccedand as air to his father, or be ony perſoun quhilk was not enterit nor ſaiſit in the ſamin the time of the making of the ſaid diſpoſitioun, is of nane availl, force nor effect, and aucht and ſould be reducit, 27 *Mart.* 1536, Johne Neilſon *contra N.* 1 *t. c.* 483. *Item*, All reſignatiounis, or uther alienatiounis, maid be ony conjunct-fear, liferentar, or be ony uther perſoun, quha, at the time of the making thairof, is not infeft nor ſaiſit in the landis that is reſignit, nor hes na heritabill ſtait nor poſſeſſioun thairof, albeit he be narreſt, and appeirand air thairto, is of nane availl, and may be reducit, as maid be ane perſoun quha had na powar to mak and give the ſamin. 24 *Mart.* 1563, Johne Kyle *contra* David Balfour. *Pen. Feb.* 1566, Johne Lintoun *contra* David Richardſone. 7 *Maij*, 1540, 1 *t. c.* 1040.

C. II. He that ſellis ony landis, may not ſell the ſamin agane.

GIF ony man ſellis and annalzeis landis to ane uther heritablie, to be haldin of himſelf or of his ſuperiour, he may not efterwart diſpone to ony uther perſoun the propertie of the ſamin landis; becauſe he is denudit of the ſamin be the firſt alienatioun, and thairfoir may diſpone nathing, except the few-maill, or uther maillis, fermis, dewteis or ſervice reſervit to him in the firſt infeftment. 9 *Mart.* 1567, *The Erle of* Mar *contra the Laird of* Pittarro, 1 *t. c.* 862.

C. III. The gevar of the ſaſine ſould alſo give a chartour.

GIF ony man ſellis and annalzeis heritablie landis to ane uther, and cauſis him to be ſaiſit thairintill, and nevertheles refuſis to give him a chartour of the ſamin landis; he may be callit and decernit be ane Judge, to mak, ſeill, and ſubſcrive ane chartour, conform to the tenour of his precept in all punctis. 9 *Aug.* 1542, Thomas Erskine *contra Abbot of* Lundoris, 1 *t. c.* 554.

C. IV. *Quod noſtrum eſt, ſine facto noſtro, in alium transferri non poteſt.*

GIF ony man be infeft in landis, fiſchingis or milnis, with thair partis and pertinentis, and be vertue of his infeftment is in peiceabill poſſeſſioun of the ſamin; the King, nor na uther man, without his conſent, may not infeft or diſpone the ſamin, or ony part, pendicle, or pertinent thairof, to ony uther perſoun: And gif utherwayis be done, the ſamin is of nane availl, and aucht and ſould be reducit at the inſtance of him quha was firſt infeft, his airis, ſucceſſouris, or aſſig-

aſſignayis. *Ult. Julij*, 1556, *The Prioreſſe of* Cauldſtreme *contra Sir* Andro Ker, 1 *t. c.* 750.

C. V. Of infeftment anes gevin.

ANE perſoun beand obliſt to infeſt ane uther in ony landis, gif the ſaid perſoun infeft him anes ſufficientlie, he is not haldin to infeft him of new agane. 8 *** 1563, Williame Sinclair *contra* James Wod *of* Bonytoun, 1 *t. c.* 1376.

C. VI. Of expenſis in obtening ane infeftment.

GIF ane perſoun bindis and obliſſis him to obtene to ane uther infeſtment of landis, he aucht and ſould obtene and deliver the ſamin upon his awin proper expenſis, except ſpeciall proviſioun be maid in the contrare. *15 Julij*, 1557, *The Laird of* Colſtoun *contra* Williame Hoppringle, 1 *t. c.* 271.

C. VII. Of ane man obliſt to cauſe ane uther annalzie his landis.

GIF ane perſoun bindis and obliſſis him to cauſe ane uther ſell or annalzie his landis heritablie to ony uther thrid perſoun, he may be callit and perſewit for fulfilling of the ſaid obligatioun: And gif he failzeis to cauſe the ſamin be fulfillit, he aucht and ſould be decernit to pay the interes, coſtis and ſkaithis ſuſtenit be him to quhome the ſamin was maid, for not fulfilling thairof. 20 *Maij*, 1542, Colin Cambell *contra the Laird of* Keir, 2 *t. c.* 93.

C. VIII. *Qui promittit conſequens intelligitur promittere antecedens neceſſarium.*

GIF ony proprietar of landis, veſt and ſaiſit in the ſamin landis, bindis and obliſſis him and his airis, to renunce, reſigne, and overgive ony landis in the ſuperiouris handis, for infeftment thairof to be gevin to ane uther; his air, efter his deceis, may be decernit firſt to enter ordourlie to the ſaidis landis, and thairefter to reſigne the ſamin, conforme to his predeceſſouris obligatioun, albeit the predeceſſour nor his airis wer not expreſlie obliſt to enter to the ſamin landis, bot allanerlie to reſigne thame; zit his air may be compellit firſt to enter, and then to reſigne; becauſe he may not reſigne, except he be firſt enterit. *Et qui ad aliquid faciendum expreſſe obligatur, intelligitur tacite obligatus ad omnia per quæ ad illud pervenitur.* 25 *Maij*, 1542, *The Laird of* Aſlowan *contra the Laird of* Pitſligo, 2 *t. c.* 102.

C. IX. Money gottin for infeftment of landis aucht to be renderit, in cais of evictioun of theſe landis from the ſuperiour.

GIF ony ſuperiour or over-lord grantis and gevis heritabill infeftment of landis to his tenent, and reſſavis fra him ſilver, or ony uther gude deid thairfoir, and thairefter it happinis the ſuperiouris infeftment of all and haill his landis, with thair tenandries, to be reducit and declarit of nane availl; the ſuperiour aucht and ſould rander agane to his tenent that quhilk he reſſavit for making of the ſaid infeftment to him; becauſe the infeftment of all and haill the landis, with the tenandries, being reducit, the infeftment maid be the ſuperiour to his tenant is likewayis declarit of nane availl, as ane infeftment of a tenandrie of the ſaidis reducit landis; and ſwa the tenent could report na proffeit be reſſaving of the ſaid infeftment, for the quhilk he gave the ſaid gude deid, and that in the ſuperiouris default and negligence, throw his not lauchfull entrie to the ſaidis landis and thair tenandreis: *Et de jure, ceſſante cauſa, ceſſare debet effectus. Et cum cauſa, propter quam aliquid datur, devenit ad non cauſam, competit danti, ſeu promittenti, aliquam ſummam, ob cauſam*

non legitime ſecutam, petitio ſeu actio ad repetendum. 5 Junij, 1548, *Laird of* Carmylie *contra Laird of* Panmuir.

C. X. Of doubill donatioun of land.

GIF ony man, or burgh, be lauchfullie infeft, and be vertue thairof in poſſeſſioun be the ſuperiour in ony landis, office, privilege or fredome within certane limitat boundis contenit in his infeftment, with eſcheitis, unlawis, and proffeitis of the ſamin; the ſaid ſuperiour may not thairefter give ane new infeftment or diſpoſitioun of the premiſſis to ony perſoun, or ony town in fré burgage, without conſent or licence of thame to quhome the firſt infeftment was maid. 10 *Mart.* 1542, *Lord* Hamiltoun *contra the burgh of* Lanark, 1 *t. c.* 976.

C. XI. Ane laitter infeftment of propertie prejudgis not ane elder of commountie.

GIF ony man obtenis heritabill infeftment of ony landis in propertie, the ſamin may not hurt nor prejudge ane uther man, quha, befoir the geving of the ſaid infeftment in propertie, was infeſt in commountie of the ſamin landis. 7 *Julij,* 1569, James Bellenden *contra Sir* Andro Lindſay, 1 *t. c.* 1367.

C. XII. Anent divers infeftmentis takin be ony perſoun.

GIF ony perſoun takis and reſſavis ſindrie infeftmentis of landis, of divers dates, he be taking of the laitter infeftment is not underſtuid to renunce and paſs fra the firſt, bot may uſe thame at his pleaſour, in judgment, or outwith the ſamin. 3 *Maij,* 1575, Williame Maxwell *of* Calderwod *contra* Thomas Weir, 2 *t. c.* 371.

C. XIII. Of reſignatioun maid be ane heretrix, in favouris of hir husband.

ANE woman beand heretrix of landis, reſignand the ſamin in the ſuperiouris handis, for infeftment to be gevin to hir husband and hir in conjunct-fie, and the airis gottin betwix thame, quhilkis failzeing, to hir huſbandis airis; ſcho, be reſſoun of the ſaid reſignatioun, is denudit of the propertie and heritabill fie of the ſaidis landis, ſwa that nathing remanis with her bot conjunct and bas infeftment of fie; and thairfoir ſcho may not reſigne the ſamin landis of new agane in favouris of ony uther perſoun, nor zit heritablie diſpone the ſamin ony maner of way, 26 *April.* 1532, Inglis *contra* Culane, 1 *t. c.* 457. Becauſe, gif ony perſoun reſignis his landis in his ſuperiouris handis for heritabill infeftment to be gevin to himſelf, or to ony uther, he is denudit of all heritabill richt and propertie of the ſamin, and thairfoir may not infeft ane uther in the heritabill richt thairof, gif he that overgave obtene not of new agane infeftment and ſaſine thairof, 12 *Decemb.* 1562, James Innes *contra* Alexander Forbes, 1 *t. c.* 1286. *Item,* Gif ony man or woman hes reſignit, *pure & ſimpliciter,* thair landis or tenementis for thame and thair airis, in the handis of the Proveſt and Baillies of the burgh, the reſignant hes na richt nor powar to give thairefter ony poſſeſſioun or ſaſine to ony uther perſoun of the ſamin landis or tenementis, untill he or ſcho be lauchfullie ſaiſit agane in the ſamin landis. *Leg. burg. c.* 119.

C. XIV. Alienatioun of a tenement within burgh.

GIF ony man havand ane land in burgage pertening to him in fie and heritage, he may not annalzie the ſamin, except he mak reſignatioun thairof in the ſuperiouris handis in favouris of the uther; the quhilk beand done, the ſuperiour may reſſave the uther in place of the reſignant; becauſe twa diverſe and ſindrie perſounis may not to-

togidder, and at ane time, have libertie and lordſchip of ane burgage. *Leg. Foreſt. c.* 19.

C. XV. Preſcriptioun of zeir and day within burgh.

GIF ony lauchfullie buyis land, and bruikis and joiſis the ſamin be the ſpace of ane zeir and day peciablie, without challenge of ony man; and zeir and day being bypaſt, ony uther perſoun, quha, befoir the iſche of the zeir and day, movit nor proponit nathing thairanent, he beand within the realme, and of perfeit age, and not in priſoun, cumis not and challengis the ſamin, he ſall not be heard thairanent in ony time cuming: Bot gif he was within age, furth of the realme, or in priſoun, he ſould be heard to perſew his richt and titill, quhen he is cum to perfeit age, returnis hame, or is deliverit furth of priſoun. *Leg. burg. c.* 10.

C. XVI. Of landis gevin to divers children.

GIF ony man havand divers landis, and divers children, gevis to ilk ane of thame ane land, and peradventure all the children being within age, and furth of thair fatheris keiping, and the father, induring his lifetime, takis up the maillis and proffeitis of the ſaidis landis; nevertheles his air, eſter his deceis, may not cum aganis the ſaid gift or alienatioun, nor ſeik the ſamin to be annullit, albeit the father in his lifetime tuik up the proffeitis of the ſaidis landis; becauſe his father gave thame, and ſa the air may not be heard in the contrare. *Leg. burg. c.* 12.

C. XVII. He quha is firſt infeft, may call for reductioun of all laitter infeſtmentis.

TWA perſounis being heritabillie infeft in ony landis be ane man, or divers men, he quha is firſt and lauchfullie infeft, quhidder he be in poſſeſſioun or not, be vertue of his infeftment, may call and perſew him quha was laſt infeft, to heir and ſé his ſaid infeftment reducit and declarit of nane availl, 22 *Mart.* 1532. And nevertheles, gif ony perſoun be laſt infeft in ony landis, to be haldin of the infefter and his airis, and not beand in poſſeſſioun conform thairto, he hes na actioun nor richt to call for reductioun of the firſt infeftment, 11 *April.* 1559, John Gray *contra* John Scot, 1 *t. c.* 924.

C. XVIII.

GIF the King diſpone ony landis to ony perſounis, gevand thame ane chartour thairof, and the ſaid chartour be regiſtrat and paſt all the ſeillis, at the deſire of the partie in quhais favouris the ſamin is grantit, it is ane ſufficient richt and titill to call for reductioun of all uther infeftmentis of the ſamin landis gevin thairefter, with ſaſine and confirmatioun followand thairupoun; albeit the perſounis to quhome the firſt chartour was maid tuik na ſaſine be vertue thairof; and that becauſe the King, be granting of the firſt infeftment and chartour, be the lawis of this realme, aucht and ſould have gevin precept for taking of ſaſine quhenever he had bene requirit thairto: And farder, be granting the ſaid firſt chartour in maner foirſaid, he was denudit of all richt of the ſaidis landis, and ſwa his handis wer cloiſit fra geving of ony uther infeftment thairefter. 20 *Feb.* 1568, Elizabeth Reidheuch, —— 1 *t. c.* 1047.

C. XIX. Of him that biggis *bonæ fide* on ane uther manis ground.

GIF ony man buyis ony land or ground fra ane uther, not pertenand to the ſellar thairof, bot to ſum uther perſoun, and obtenis infeftment and ſaſine of the ſamin, and thairefter biggis, *bona fide*, ony houſis

houſis or uther bigging thairupon; gif ony man call and perſew him to hear and ſé his ſaſine and richt reducit and retreittit, the ſamin may be reducit, notwithſtanding that he object in the contrare, that he biggit *bona fide*, and thairfoir ſould firſt have the expenſis maid be him thairupon: Bot nevertheles he hes gude richt to retene the ſaid land and houſis, quhill the expenſis maid upon the bigging or beiting thairof be firſt refoundit and payit to him, 4 *Feb.* 1539, Aliſone Rouch *contra* Williame Wallace. Becauſe he may not be decernit to remove thairfra, notwithſtanding the reductioun of his inſeſtment, untill the time his expenſis be modifyit be the Judge, and paid to him. 13 *Junij*, 1564, Margaret Bryce *contra* N. Richieſone, 1 *t. c.* 331.

C. XX. The diſpoſitioun may be reducit, gif the donatour fulfill not the cauſe thairof.

ALL giftis and diſpoſitiounis of landis, or ony uther gudis and geir, gevin to ony man for his gude ſervice, afauld ſupplie, maintenance, and defence to be done in time cuming to the gevar, and all his airis, in all his and thair actiounis, is of nane availl, force nor effect, and may be reducit; and the ſaid gevar ſould be reſtorit and reponit in his awin place, gif he to quhome the ſamin is maid failzeis in doing of the premiſſis, being requirit thairto. 7 *Aug.* 1507, Margaret Houſtoun *contra* George Lyle, 1 *t. c.* 260.

C. XXI. Ratificatioun ſtoppis reductioun.

GIF ony perſoun makis and gevis inſeſtment, aſſedatioun, or uther diſpoſitioun of landis, gudis or geir to ane uther, and thairfoir reſſavis ony gratitude or gude deid, he may not thairefter come in the contrare thairof, nor call for reductioun of the ſamin. 11 *Feb.* 1533, 1 *t. c.* 959.

C. XXII. How the father may revoke landis gevin to his ſone for his ingratitude.

GIF ony havand landis, ather of heritage or of conqueiſt, give the ſamin all and haill in his *liege pouſtie* to his ſone, for fatherlie love and affectioun that he bearis towart him; and thairefter the father, being in povertie and great neceſſitie, ſchaw the ſamin to his ſone, and nevertheles reſſave na help nor ſupport of him; it is leaſum to the father to ſell or wadſet the ſaidis landis, being heritage or conqueiſt, to quhome he pleiſis, notwithſtanding the diſpoſitioun maid be him to his ſone, as ſaid is, of befoir: Bot the fatheris povertie ſould be provin, befoir the ſelling and alienatioun, be twelf leill nichtbouris, quhairof four ſould dwell in ilk ane of the four airthis about his houſe; utherwayis the laſt alienatioun maid be the father, be reſſoun of his povertie, is of nane availl, force nor effect. *Leg. burg. c.* 11.

C. XXIII. He quha may be callit to warrant ony contract, obligatioun, or inſeſtment, may not call for reductioun thairof. *Fit oneroſus et lucratus.*

NA man quha is enterit air to his predeceſſour may call and perſew for reductioun and retractatioun of ony inſeſtment, alienatioun, diſpoſitioun, or aſſedatioun, maid and gevin *titulo oneroſo*, be his predeceſſour, to ony perſoun; *quia quem de evictione tenet actio, eundem agentem repellit exceptio. Ult. Julij*, 1562. 17 *Mart.* 1562, Robert Acheſone *contra* Johne Lumiſdane *of* Blanerne. Bot gif the ſame be ſet *titulo lucrativo*, be his predeceſſour, he havand reſſonabill cauſe, may call for reductioun thairof; becauſe of the law he may not be compellit to warrant the ſamin, 1 *t. c.* 799.

Anent

Anent alienatioun of heritage and landis.

C. I. Of alienatioun maid be him that hes heritage allanerlie, &c.

QUHEN ony man gevis and diſponis his landis be reſſoun of tocher-gude, or utherwayis, ather he has heritage allanerlie, conqueiſt allanerlie, or baith heritage and conqueiſt: Gif he hes heritage allanerlie, he may give ane part thairof, at his awin will, to ony perſoun he pleaſis, with his ſone, dochter, or ony uther woman, in marriage, quhidder he have an air or nane: And gif he have an air, quhidder the air conſent or not, he may give a certane part of his landis to ony perſoun in reward of his ſervice, or to ane religious place, in name of almons; the quhilk alienatioun, donatioun and diſpoſitioun, maid heritablie, ſall remane with him perpetuallie, and his airis, to quhome it is maid, gif ſaſine and poſſeſſioun followit thairupon, befoir the deceis of the maker thairof: Bot gif na ſic ſaſine followit upon the ſaid gift, the ſamin, efter the death of the gevar, is of nane availl, force nor effect, and nathing may be aſkit be vertue thairof, contrare the pleaſour and gude will of the air; becauſe ſic ane gift and diſpoſitioun, with na ſaſine following thairupon, be the law of this realme is underſtuid to be bot a bair promiſe or nakit pactioun, rather nor a ſure diſpoſitioun or obligatioun cled with ony ſtrenth or effect. *Lib.* 2. *c.* 21. *De jud. c.* 113.

Alienatioun without ſaſine.

C. II. The father may not give his heritage to his efter born, or baſtard ſone.

THE father, havand twa or ma ſonis lauchfullie gottin, may not give ony part of his heritage to his ſecund or uther efter born ſone, without conſent of his air and eldeſt ſone; for gif it war leaſum to him to do the ſamin, the eldeſt ſone and lauchfull air oftimes micht be diſheriſhit, in reſpect that the father divers times uſis to have a greater favour and affectioun to his efter born ſone than to his eldeſt. And conſequentlie he the father havand ane ſone and air, with ane baſtard ſone, may not give ony part of his heritage to the ſaid baſtard ſone, for the baſtard ſone ſould be of na better eſtait and conditioun than the efter born ſone lauchfullie gottin in mariage. *Lib.* 2. *c.* 22.

C. III. Of alienatioun maid be him that hes conqueiſt allanerlie.

IT is leaſum to ony man havand conqueiſt landis allanerlie, to give a part thairof to quhome he pleiſis; bot he may not give all and haill the ſamin in manifeſt diſheriſhing of his ſone and richteous air: Nevertheles, gif he hes na ſone nor dochter lauchfullie gottin of his bodie, he may give and diſpone, to quhome he pleaſis, all and haill his conqueiſt landis, or ony part thairof: And gif ſaſine and poſſeſſioun be tane, be vertue of the ſaid diſpoſitioun or infeftment, be him to quhome the ſamin is maid, and befoir the deceis of the maker thairof, the ſamin is of ſufficient ſtrenth, and may not in ony wayis be alterit, changit or reducit, at the inſtance and deſire of him that is mediat or farder air to the maker of the ſamin. And ſuppois it is leaſum to ane in his lifetime to give all his conqueiſt, as ſaid is, nevertheles he may mak na man nor collegue his air, becauſe it is God allanerlie, and not man, that makis airis, *Lib.* 2. *c.* 23. *Item*, It is leaſum to everie burges to ſell, give, and diſpone

his landis conqueiſt be him, and paſs quhair he pleaſis, except the landis be challengit and reclamit be ane uther. *Leg. burg. c.* 45.

C. IV. Of ane havand baith heritage and conqueiſt.

GIF ony man hes ſum landis pertening to him as heritage, and ſum uther landis as conqueiſt, he may leaſumlie give all and haill his conqueiſt landis, or ony part thairof, without conſent of his eldeſt ſone, to his ſecund or ony uther efter born ſone, to remane with thame perpetuallie in all time cuming: And as to his heritage, he may nevertheles give reſſonablie of the ſamin in maner abone expremit. *Lib.* 2. *c.* 23.

C. V. He that wald annalzie his landis ſould firſt offer the famin to his narreſt kinniſman.

GIF ony burges be conſtrainit with miſter and neceſſitie, ſwa that it behovis him to ſell his heritage, he ſould offer the famin at thré heid courtis to his narreſt airis: And gif thay will buy the ſamin, thay mon ſuſtene and find him in all neceſſare thingis, in meit as thameſelfis, and in claith of ane colour, *viz.* gray or quhyte: And gif thay will not, or may not, buy the famin, nor ſuſtene him as ſaid is, it is leaſum to him to ſell the ſaidis landis to ony uther in the beſt maner he may: And gif the air be not within the realme, bot in the nixt kinrik, the annalzier ſould abyde him be the ſpace of fourtie dayis; and gif he be in ane uther realme, nixt that realme, he ſould abyde him be the ſpace of twiſe fourtie dayis; and ſiclike of all uther realmis that ar mair diſtant: And gif the air, throw evill will or malice, abſent himſelf efter the time abone expremit, it is leaſum to the annalzier that miſteris to diſpone upon the landis as he pleaſis, *Leg. burg. c.* 45. *Item*, Gif ony heritage of burgage happin to fall be reſſoun of the father or mother to ony man, woman, brother or ſiſter, and it behovis him or her, of povertie, to ſell, wadſet, or ony uther wayis annalzie the ſamin, it is not leaſum to him or hir ony wayis to diſpone the ſamin fra himſelf to ane ſtrange man, gif the narreſt airis will buy the ſamin, or tak it in few or in wadſet: Nor is it leaſum to ony man havand an air living, to annalzie or diſpone in ony maner of way his landis, or the frank tenement thairof, to ony perſoun, befoir he have firſt offerit the ſamin to his air. *Leg. burg. c.* 114.

C. VI. Of him that fraudfullie borrowis ſilver to redeme annalzeit landis.

GIF ony burges hes ſauld his landis for neceſſitie, efter that he had offerit it to the narreſt airis, and thay had not at the time of the offering and buying quhairwith thay micht have bocht it; and efter, quhen thay ſé the land advancit and biggit, ſum of thame cumis and offeris to buy the foirſaid land with ſilver lent to him, throw fraud and guyle, in this cais his offer ſould not be heard, nor he admittit agane to call or reduce the foirſaid alienatioun. *Leg. burg. c.* 94.

C. VII. The fear ſould offer the landis to the frank tenementar.

IT is ſtatute and ordanit, that gif ony man gevis infeftment of landis to ony perſoun, and puttis him in fie thairof, reſervand the frank tenement of the ſamin, or ony zeirlie dewtie or annuelrent to himſelf, and thairefter it happin the ſamin fear to be compellit, throw neid and neceſſitie, to ſell and annalzie the ſaidis landis; the ſaid frank tenementar and his airis is narrer to the fear nor ony uther, and thairfoir the ſamin landis ſould be offerit to him befoir ony uther. *Leg. burg. c.* 98. *& in Purv. c.* 92.

THE

C. VIII. Na man may annalzie his wife's landis.

THE husband may not annalzie his wife's heritage, or ony part thairof, without conſent of hir air, nor zit prejudge hir nor hir airis richt thairanent, bot induring his awin lifetime to joiſe the ſamin, for he is lord and maiſter of all that his wife hes induring his lifetime allanerlie, *Lib. 2. c. 32. De jud. c. 118. Mod. ten. cur. c. 23.* And gif he dois in the contrare, efter his deceis, his wife, gif ſcho lykis, or hir air, gif ſcho be deid, may revoke and agane call, as ſcho that in the time of the making of the alienatioun wes under hir husbandis wand, and micht not ganeſtand his will: And the law ſayis, that ſcho beand under the powſtie of hir husband, hir voie in law hes na richt, quhairfoir in all his lifetime ſcho micht not nor durſt not oppone hir to his will, quhidder he demandit and intreatit hir lauchfullie or utherwayis, *Mod. ten. cur. c. 23. Quon. attach. c. 14. Item,* Gif the husband, havand landis of his awin, pertenand to him in heritage or conqueiſt, annalzie his wife's heritage; efter his deceis, his air is bund and obliſt of the law to warrand to hir hir ſaid heritage or landis, or to give to hir of his awin ane reſſonabill *excambium* thairfoir. *De jud. c. 118.*

C. IX. Anent alienatioun of the wife's landis maid be the husband.

GIF ony man maryis ane heretrix of landis, and induring the time of the mariage, he (without hir conſent) ſellis or diſponis the ſaidis landis, or ony part thairof, be alienatioun, confirmatioun, or be reſignatioun thairof in the ſuperiouris handis, in favouris of ony perſoun, or utherwayis; the ſaid diſpoſitioun, with all that followit thairupon, is of nane availl, force nor effect; becauſe the huſband, maker thairof, the time of the making of the ſamin, was allanerlie conjunct-fear with his ſaid ſpouſe of the landis foirſaidis: And thairfoir all and haill the ſamin landis ſwa diſponit ar in the ſuperiouris handis, be reſſoun of non-entres, fra the time of the ſaid husbandis deceis untill the time of the entrie of ane richteous and lauchfull air thairto. 4 *Aug.* 1529, 1 *t. c.* 293.

C. X. Alienatioun maid be minoris.

ALL alienatiounis and diſpoſitiounis of ony moveabill gudis, or ony annuelrent, or immoveabill gudis pertening to ane minor, maid be him, with conſent of his tutor, for his evident weill and profeit, is of like ſtrenth, valour and effect as gif thay war maid be him beand of lauchfull and perfite age, gif the authoritie and decreit of ane Judge ordinar be interponit to the faidis alienatiounis, admittand, apprevand and ratifyand the ſamin for the cauſis foirſaidis. 1 *Decemb.* 1525, Geillis Zoung *contra ane pupill, and Sir* Johne Zoung *his tutor,* 1 *t. c.* 398.

C. XI. Na man may annalzie his landis upon his death-bed.

SUPPOIS it be generallie leaſum to ilk man to annalzie and put away in his lifetime, to quhome he pleaſis, ane reſſonabill part of his landis; nevertheleſs it is not leaſum to him to do the ſamin in time of his ſeiknes and death-bed, *Lib. 2. c. 21.* And thairfoir it is ſtatute, that ane burges, or uther man, lyand ſeik in his bed, of the quhilk ſeiknes it happinis him to deceis, ſall not give, ſell, wodſet, nor in ony maner annalzie or put away fra his richteous air his landis, or ony part thairof, pertenand to him as heritage or as conqueiſt landis, purcheſt be him in time of his health, *Leg. burg. c. 153. Stat. Will. c. 3.* Becauſe, gif it war leaſum to do the ſamin, he micht, in ane moneth, or ſchorter ſpace, diſtribute all his landis, and

and thairby diſheriſh his richteous air. And mairover, gif ony man, being vexit with a deidlie infirmitie, annalzeis his landis, the quhilk he wald not do the time of his health, it is thocht and preſumit that he did not that be ſure and gude deliberatioun of the mind or judgment, bot rather throw the heat and ſtrenth of ſeiknes, and throw inlake of reſſoun and memorie; the quhilk imperfectioun happinis at ſic times to mony, as thay are vexit with the cruell panis and preſent fear of death. *Lib.* 2. *c.* 21.

C. XII. In quhat caiſis it is leaſum to annalzie landis upon death-bed.

ALBEIT it be not leaſum nor permittit to ony perſoun, liege of this realme, to annalzie, diſpone, nor put away ony of thair landis and heritage, in hurt and prejudice of thair richteous air, the time that thay ſall happin to be upon thair death-bed, vexit and haldin in ſeiknes, in the quhilk thay continue unto thair deceis; zit nevertheles in ſum caiſis it is leaſum and permittit to ony man to annalzie or diſpone his landis, or ony part thairof, in time of ſeiknes, quhairof he happinis to die: And firſt, all ſic alienatiounis ar ſufficient of the law, gif the ſamin be maid with aviſe and conſent of the richteous air, or gif the ſamin be ratifyit and confirmit be him, *Lib.* 2. *c.* 21. *Item*, All ſic alienatiounis ar gude and ſufficient, gif thay be maid for greit neid, miſter and povertie, ſufficientlie knawin and provin befoir the making thairof; or gif the maker of the ſamin be chargit and burdenit with debtis, and his air may not, or will not, releive him thairof, *nam neceſſitas non habet legem*: Quhair neceſſitie hes hir violent force, the diſpoſitioun of the law hes na place, *Lib.* 2. *c.* 21. *Leg. burg. c.* 153. *Stat. Will. c.* 30. And thairfoir it is leaſum to ony man in his ſeiknes and death-bed, according to his neceſſitie and debt, to annalzie or diſpone his landis, heritage, or ony part thairof, he having na uther gudis and geir of his awin, ſufficient for ſuſtening of him to his deceis, or gif he be ſwa thirlit in annuellis, or uther debtis, to utheris, fra the quhilk he cannot be releivit bot be making of the ſaid alienatioun and diſpoſitioun: And the ſamin maid for the cauſis foirſaid is ſufficient, and may not be reducit, albeit it be maid in hurt and prejudice of the richteous air, 8 *April.* 1568, James Henryſone *contra* Williame Henryſone, 1 *t. c.* 908. *Item*, It is to be underſtuid, gif ony perſoun being in gude health, and able to gang to kirk, merkat or feildis, or do his leaſum buſines, in the mean time makis and perfeitis ane contract, bindand and obliſſand him to ony man, to infeft him heritablie in ony landis, and cauſis the ſame be regiſtrate in the buikis of ane ordinar Judge, or ſubſcryvit be the partie, gif he can writ, or ellis be ane Notar-publict, or utherwayis ſubſcrivit be ane Notar under the forme of inſtrument; and thairefter he contractis ſeiknes, and, *in lecto ægritudinis*, makis, ſeillis and ſubſcryvis chartour and precept of ſaſine, for fulfilling of the ſaid contract maid in his gude health as ſaid is; the ſaid alienatioun and infeftment, with ſaſine following thairupon, is ſufficient, and aucht not be reducit, becauſe the ſamin procedit upon ane contract and obligatioun maid in time of health in maner foirſaid, 14 *Decemb.* 1569, Agnes Cunynghame *contra Laird of* Drumquhaſſill. 16 *Jan.* 1569, James Louriſtoun *contra L.* Corſtorphine, 1 *t. c.* 873. *Item*, Gif landis be annalzeit to ony man heritablie, in time of ſeiknes, and upon death-bed, and he to quhome the ſamin is annalzeit obtenis ſaſine and poſſeſſioun, and in-

intromettis with the fruitis thairof be ony ſpace, and preivis be ſufficient witneſſis that the annalzier thairof was of perfeit judgment and memorie befoir the alienatioun and making thairof; the ſame is ſufficient, firm and ſtable of the law, albeit it was maid in the time of ſeiknes and infirmitie, *De jud. c.* 113. *Item*, Gif ony man callis and perſewis another for reductioun of alienatioun of landis, maid to him be ony man *in lecto ægritudinis*, the ſamin ſould not be reducit, gif the defendar alledge and pruif ſufficientlie, that the maker of the ſaid alienatioun, at the time of the making thairof, and ane certane ſpace of befoir, and alſua efter the ſamin, was of perfyte age, judgment and knawledge, and that he was of ſufficient habilitie to gang and repair within the houſe; and that he did, conform to his age, repair to do his leaſum buſines, quhen he thocht beſt, in kirk or merkat, or uther placis neidfull, quhair he was accuſtomit to do of befoir, 8 *April.* 1568, James Henriſoun *contra* William Henriſoun. 16 *Jan.* 1569, James Lauriſtoun *contra the L. of* Corſtorphin, 1 *t. c.* 929. *Item*, It is leaſum to the husband, or to the wife, to give infeftment *in lecto ægritudinis*, in conjunct-fie of thair landis, to his wife, or to hir husband, be alienatioun or reſignatioun thairof in the ſuperiouris handis to that effect; becauſe be geving of a conjunct infeftment the air is not perpetuallie prejudgit, or hurt bot for a certane time, and induring the conjunct-fearis lifetime allanerlie. 28 *Junij*, 1542, William Symmer *contra* Euphame Symmer, 2 *t. c.* 115.

C. XIII. The King may not annalzie the ſuperioritie of his tenandreis without conſent of his tenent.

ITEM, Anent giftis, alienatiounis, or uther diſpoſitiounis of ſuperioritie of landis pertening to tenentis or vaſſallis, haldand the ſamin of our ſoverane Lord the King, it is ſtatute and ordanit, that gif the King annalzie or diſpone to ony of his liegis the ſuperioritie of ony landis immediatelie haldin of his Grace in cheif, without conſent of the tenent or vaſſall, the ſamin alienatioun and diſpoſitioun is and ſall be in all times cuming of nane availl, force nor effect; and that the ſaid tenent, quha was the Kingis tenent befoir the making of the diſpoſitioun, ſall remane tenent to his Grace efter the making of the ſamin, except gif he, of his awin fré will, becum tenent to him to quhome the diſpoſitioun is maid, and willinglie, and be virtue of the ſaid diſpoſitioun, reſſave and acknawlege him as his ſuperiour and over-lord. *Stat. Rob.* III. *c.* 4.

C. XIV. The King may not annalzie the ſuperioritie of landis haldin of him as Erle, without the vaſſallis conſent.

ITEM, Tuiching Baronis infeft in thair landis and baronies, lyand within ony erldome or lordſchip, beand in the Kingis hand for the time, and haldin of him as Erle or Lord of the ſaid erldome or lordſchip; it is ſtatute, that gif the King gevis ony infeftment of the ſaid erldome or lordſchip to ony perſoun, with tenandrie and fré tenentis, nevertheles the ſaid Baronis may not be compellit to hald thair landis and baronies in cheif of him to quhome the infeftment is maid, bot of the King allanerlie. *Stat. Rob.* III. *c.* 5.

C. XV. He quha hes tint the ſuperitie for his lifetime, may nevertheles annalzie the ſamin.

GIF ane ſuperiour of perfeit age lyis furth of his landis, in defraud of his tenent or vaſſall, and beand chargit, refuſis to enter, and thairby forefaltis and tynes the ſuperioritie for his lifetime; he may nevertheles ſell and and annalzie the ſaid ſuperioritie tint during

ring his lifetime, as ſaid is, fra him and his airis, to quhome he pleaſis. 29 *April.* 1540, 2 *t. c.* 5.

C. XVI. Of alienatioun of the chemiſe.

NA man may annalzie or put away his principall meſſuage or head tenement fra his air, nor give the ſamin in dowrie to his wife, gif he hes ony uther land quhilk he may give hir in name of dowrie, or for neceſſitie he ſell and put the ſamin away. *Leg. burg. c.* 107.

Of fraudfull and doubill alienatiounis.

C. I. The committar of fraud in alienatioun may be puniſt be confiſcatioun.

GIF ony man committand the crime of *ſtellionatus*, gevis and makis, willinglie and wittinglie, doubill infeftmentis, takkis, aſſedatiounis, or ony alienatiounis or diſpoſitiounis of his landis to divers and ſindrie perſounis, he may be callit at the Kingis inſtance, and all his moveabill gudis and geir may be confiſcat be his Hienes for making of the ſamin. 15 *Januar.* 1505, *The King* contra Johne Taillefer. 26 *April.* 1513, Adame Kinghorne, *contra* Johne Macalaſter, 1 *t. c.* 228.

C. II. A private infeftment is not hurtfull to ane lawfull infeftment with poſſeſſioun follow- and thairupon.

GIF ony man puttis his ſone, or ony uther perſoun in the fie of his landis, haldin of himſelf, and thairefter ſellis the ſaidis landis, *titulo oneroſo*, to ony uther man, and puttis him in poſſeſſioun thairof be vertue of his infeftment; his ſone, or the uther perſoun to quhome the landis wer firſt diſponit, may not, be vertue of his firſt infeftment, remove the ſecund buyer of the ſaidis landis or tenementis; becauſe the firſt infeftment was private, clandeſtine, and unknawin to the ſecund buyar, and thairfoir ſould not be hurtfull nor prejudiciall to him quha bocht the ſaidis landis *bona fide, titulo oneroſo*, and is in poſſeſſioun be vertue of the ſamin, 27 *Junij*, 1534, Robert Cunynghame *contra* Johne Logane, 1 *t. c.* 456.

C. III. *Qui prior eſt tempore, potior eſt jure.*

DOUBILL and divers giftis of non-entrie, ward, or ony uther thing, being gevin and diſponit be the ſuperiour to divers and ſindrie perſounis, the firſt donatour aucht and ſould be preferrit to the laſt, *ceteris paribus*. 12 *Jan.* 1515, Johne Logane *contra* Jonet Auchinlek, 1 *t. c.* 623.

C. IV. The laſt diſpoſitioun, with the firſt intimatioun, is preferrit to the firſt diſpoſitioun.

GIF the King, or ony of his liegis, makis doubill giftis, or divers and ſindrie diſpoſitiounis to divers perſounis of ony dewtie or caſualtie pertening to the crown, and the laſt donatour makis lauchfull intimatioun to the partie quhome it effeiris, or cum and obtene poſſeſſioun be vertue of his gift, befoir ony intimatioun or poſſeſſioun be maid and obtenit be the firſt donatour; the laſt donatour aucht and ſould be preferrit to the firſt, in reſpect of his intimatioun or poſſeſſioun. *Ult. Julij*, 1526, Helene Stewart *contra* William Sinclare, 1 *t. c.* 280.

C. V. The firſt donatour, with the firſt ſummoundis, preferrit to the

GIF the King gevis and diſponis to divers and ſindrie donatouris, divers and ſindrie giftis of non-entres, ward, or uther caſualtie pertening to his Hienes, and the firſt donatour raiſis ſummoundis be vertue of his gift, aganis the laſt donatour, and cauſis the ſamin be exc-

execute upon him befoir he obtene his gift; he, be reſſoun he prevenis him be ſummoundis, aucht and ſould be preferrit to him, notwithſtanding that the laſt donatour obtenit firſt poſſeſſioun, and be thairintill. 28 *Julij*, 1541, Edwart Stewart *contra the Laird of* Luſs, 1 *t. c.* 530. laſt donatour, haveand firſt poſſeſſioun.

GIF the King gevis and diſponis to divers and ſindrie donatouris, divers and ſindrie giftis of non-entres, ward, or ony uther caſualitie pertening to his Hienes, and the laſt donatour raiſis letteris conforme to his gift, and thairwith lauchfullie ſummondis all perſounis havand interes thairto, and ſpeciallie the firſt donatour, and obtenis decreit conforme thairto; gif the firſt donatour beand lauchfullie ſummondit, compeiris not befoir the geving and pronuncing of the ſaid decrete, he ſall never be hard aganis the executioun of the ſamin, or zit to clame ony richt or title be vertue of the gift or diſpoſitioun maid to him. 21 *Maij*, 1545, James Lauder *contra* James Kneland, 1 *t. c.* 600. C. VI. The firſt donatour beand firſt ſummoundit be the laſt, and not compeirand, tynes the richt of his donatioun.

DIVERS and ſindrie alienatiounis and infeftmentis of landis beand maid and gevin be ane man to divers ſindrie perſounis, he that hes the laſt infeftment, with firſt poſſeſſioun followand thairupon, aucht and ſould be preferrit to him quha hes firſt infeftment without poſſeſſioun; *quia prior poſſeſſio, cum titulo poſteriore, potior eſt priore titulo, ſine poſſeſſione*; becauſe the firſt poſſeſſioun followand upon the ſecund titill, is of greiter ſtrenth than the firſt titill without poſſeſſioun. 19 *Mart.* 1567, *The Erle of* Mar *contra Laird of* Pittarro, 1 *t. c.* 861. C. VII. The laſt titill, with the firſt poſſeſſioun, preferrit to the firſt without poſſeſſioun.

GIF the King, or ony uther perſoun, makis and gevis to ony man, and his aſſignayis, ony richt, titill, or clame of richt, quhilk he hes of ony thing, as propertie or caſualtie juſtlie pertening to him, and thairefter makis of new ane uther diſpoſitioun of the ſamin to ony uther perſoun; the laſt donatour aucht and ſould be preferrit to the firſt, and bruik and joiſe all that is contenit in his gift and diſpoſitioun, gif the firſt donatour maid ony aſſignatioun, induring his lifetime, of the ſamin, untill the time of his deceis; becauſe the ſamin aſſignatioun is ſimulat, feinzeit, and of nane availl, the ſamin beand maid *inter vivos*, and na poſſeſſioun followand thairupon in the perſoun to quhome the ſamin is maid, bot the maker thairof remaneand in poſſeſſioun fra the day of the aſſignatioun untill his deceis, be uptaking of the proffeitis of the ſamin, or utherwayis; quhairthrow the richt and titill of all that quhilk was firſt diſponit, returnit agane to the King, or ony uther perſoun maker of the firſt richt, ſwa that he micht diſpone thairupon of new agane at his pleaſour. 12 *Muij*, 1529, *The King* contra Agnes *Countes of* Bothwell *and utheris*, 1 *t. c.* 34. C. VIII. The laſt donatour is preferrit to the aſſignay unlauchfullie maid be the firſt donatour.

PROVISIOUN and panis of thame committand fraud in alienatioun or utherwayis. *Ja.* V. *fol.* 138. *act.* 85. 14 *Mart.* 1540. C. IX.

Anent

Anent reſignatioun.

C. I. The procuratorie of reſignatioun ſould be ſeilit and ſubſcrivit.

ITEM, It is ſtatute and ordanit, that all reſignatiounis to be maid be vaſſallis in time to cum, of thair properties in the ſuperiouris handis, *ad perpetuam remanentiam*, beand maid be procuratorie, the ſaid procuratorie ſall be ſeilit and ſubſcrivit be the vaſſallis handis: And gif he cannot write, to be ſubſcrivit with his hand at the pen, led be ane authentick Notar, and ſeilit as ſaid is. And gif the ſaid reſignatioun beis maid be the vaſſall perſonallie, *ad perpetuam remanentiam*, that the inſtrument thairof be ſeilit with the ſeill of the reſignar, and ſubſcrivit with his hand: And gif he cannot write, to be ſubſcrivit with his hand at the pen, led be ane Notar in maner foirſaid: And na reſignatioun, *ad perpetuam remanentiam*, to have faith in time to cum, utherwayis than is abone ſpecifeit. *Mar. R. fol.* 161. *act.* 11. 20 *Junij*, 1555. *Mar. R. fol.* 178. *act.* 17. 4 *Junij*, 1563.

C. II. Procuratorie of reſignatioun may not be maid be word.

GIF ony perſoun makis and conſtitutis, *viva voce*, and be word allanerlie, ane Procurator to mak reſignatioun of his landis in the ſuperiouris handis, the ſamin procuratorie of reſignatioun, with ſaſine and all uther thingis followand thairupon, is of nane availl, and aucht and ſould be reducit; becauſe all ſic procuratories and mandatis ſould be maid in writ, ſeilit and ſubſcrivit be the ſeill and hand-writ of the reſignant: Or gif he cannot ſubſcrive, the ſamin ſould be under form of inſtrument. 27 *April.* 1563, *N. contra* Agnes Halden. 1 *t. c.* 805.

C. III. *Morte mandatoris exſpirat mandatum.*

GIF ane procuratorie of reſignatioun is maid be ony man, to reſign his landis or tenementis in the ſuperiouris handis, for infeftment thairof to be gevin to ane uther, reſignatioun ſould be maid conform thairto befoir the deceis of the maker of the procuratorie; utherwayis, gif ſaſine be gevin efter his deceis, the ſamin is of nane availl, and aucht and ſould be reducit. 9 *Maij*, 1542, 1 *t. c.* 543.

C. IV. Reſignatioun of landis being in non-entrie.

LANDIS beand reſignit be the heritour thairof in the ſuperiouris handis, in favouris of ane other, gif theſe landis be in non-entrie the time of the making of the ſaid reſignatioun, the ſamin reſignatioun, with all that hes followit thairupon, is of nane availl, and ſould be reducit: Becauſe the ſamin is done in hurt and ſkaith of the ſuperiour, and in defraud of the non-entrie pertening to him; and als becauſe the reſignant not beand veſt and ſaſit in the ſamin landis at the time of the making of the ſaid reſignatioun, thay beand at that time in non-entrie, as ſaid is, had na powar to reſigne the ſamin. *Ult. Julij*, 1555, *The Quenis Advocate* contra Alexander Spittle, *donatour to the non-entrie of* Elizabeth Forbes, 1 *t. c.* 1199.

Anent aſſignatioun.

C. I. All aſſignatiounis ſould contene a cauſe.

ALL aſſignatiounis or contractis, not contenand ane titill onerous or lucrative, is of nane availl, force nor effect, be way of exceptioun. *Pen. Novemb.* 1533, *The Abbot of* Kilwinning *contra* Andro Auchinleck, 1 *t. c.* 438.

C. II. Ane aſſignay may clame na mair nor pertenit to the aſſignant.

LANDIS fallin in the ſuperiouris handis be reſſoun of ward or non-entres, the ſuperiour is not bund nor obliſt to keip the takkis ſet to tenentis.

ANE gift or diſpoſitioun beand maid and gevin of ony thing, to twa perſounis conjunctly and ſeverally, and ony ane of thame mak and conſtitute ane aſſignay, the ſamin aſſignay, be vertue of his aſſignatioun, may not clame mair nor the ane half of the ſaid gift; for the uther half thairof pertenis to the uther perſoun to quhome the ſamin was maid, and quha maid na aſſignatioun thairof, 3 *Julij*, 1533, Robert Cairnis *contra* Robert Leyis. And ſiclike, gif the ſaid diſpoſitioun be maid to ma perſounis, the aſſignay to have efter the rate and quantitie thairof, 1 *t. c.* 431.

C. III. The aſſignay ſould mak intimatioun to the debtor of his aſſignatioun.

GIF ony creditour makis and conſtitutis ony perſoun his ceſſioner and aſſignay to ony debt auchtand to him, the ſaid aſſignay aucht and ſould mak lauchful intimatioun of the ſaid aſſignatioun to the debtour; utherwayis, gif the ſaid debtour happinis to pay the creditour, or ony utheris in his name, havand his richt and powar, befoir ony intimatioun maid to him, he on na wayis ſould be compellit to mak ony payment to the ſaid aſſignay be reſſoun of his aſſignatioun. 22 *Junij*, 1492, Malcolme Drummond *contra* Margaret Muſchet, 1 *t. c.* 109.

C. IV. Aſſignatioun not intimat is not prejudiciall to the parteis.

GIF ony man be maid aſſignay to ony actioun, aſſedatioun or reverſioun, and he aganis quhome the ſamin is maid, befoir ony intimatioun thairof lauchfullie maid unto him, compone, tranſact or agrie with the maker thairof, tuiching the contentis of the ſamin, and obtene his diſcharge, richt or titill thairanent, he may not be callit or perſewit be the ſaid aſſignay, be vertue of his aſſignatioun, bot *jure præventionis* is ſtoppit and ſecludit thairfra. 4 *Julij*, 1558, *M.* David Macgill *contra* Johne Laureſtoun, 1 *t. c.* 755.

C. V. The form of the intimatioun of the gift of mariage.

GIF ony perſoun havand, be gift of the ſuperiour, the mariage of ony air, he ſould lauchfullie intimat the ſamin to him, *viz.* he or his procurator ſould cum to the perſonall preſence of the air, and ather reid his gift, or give and deliver him ane copie thairof, and tak inſtrument in the handis of ane Notar thairupon; for gif he, or his procuratour, paſs to the perſonall preſence of the heritour, and expone to him be word that he hes the gift of the mariage diſponit to him be the ſuperiour, or that he is ceſſioner and aſſignay lauchfullie conſtitute be the donatour thairof, and makis intimatioun to him of the ſamin, the ſamin verbal intimatioun maid *nuda voce* is not ſufficient; and thairfoir, albeit the air marie without con-

ſent of the ſaid donatour, or his aſſignay, he ſould not be compellit to pay to him the doubill avail of the mariage, bot the ſingle avail allanerlie, *Pen. Julij*, 1558, *The Quene, and the Abbot of* Coupar, *donatour*, contra *the Laird of* Duffus. And the like to be obſervit in all intimatiounis of ony uther richtis, evidentis or titillis, 1 *t. c.* 759.

C. VI. Intimatioun maid be the aſſignant, excludis him fra all richt quhilk he had of befoir.

GIF the creditour makis and conſtitutis ane aſſignay and ceſſioner to ony debt auchtand to him, and makis intimatioun of the ſamin aſſignatioun to the debtour, the ſamin is ſufficient in all time cuming to ſeclude him fra all actioun that he had, or may have, aganis the ſaid debtour, albeit he that is aſſignay mak na intimatioun of the ſaid aſſignatioun to the debtour. 25 *Januar.* 1540, 2 *t. c.* 50.

C. VII. All aſſignatiounis without poſſeſſioun ar of nane availl.

ALL aſſignatiounis and reſignatiounis maid be ony man to his ſone, or ony uther perſoun, of landis, gudis, cornis, cattell, or uther is, is of nane avail, be way of exceptioun, gif the maker thairof remane ſtill in poſſeſſioun of the ſamin gudis or landis, or of the maiſt part thairof, like as he did befoir the making of the ſamin; *quia donans & retinens nihil agit.* 1 *Martij*, 1558, David Thomſone *contra* Williame Chirnſide. 21 *Mart.* 1566, Williame Lauder *contra* Cuthbert Cranſtoun. 5 *Julij*, 1561, Johne Acheſone *contra Lord* Seytoun. 26 *Mart.* 1563, *Sir* Johne Futhie *contra* Williame Cranſtoun, 1 *t. c.* 767.

C. VIII. Of aſſignatioun maid be ane rebell.

ATTOUR, All aſſignatiounis and diſpoſitiounis of ony landis, takkis, rowmis, or uther gudis and geir quhatſumever, maid to ony perſoun, and ſpecially to ane convict perſoun, be ane man quha happinis to be denuncit rebell, and put to the horn, is of nane avail, force nor effect, and aucht and ſould be reducit, as done in hurt, prejudice and fraud of the Kingis Hienes, and the richt of his crown, gif the maker thairof, efter the making of the ſamin, at the leiſt at the time of the denunciatioun of him to the horn, remanit and wes in poſſeſſioun thairof, and uſit and diſponit thairupon at his pleaſour, *tanquam dominus* and proprietar thairof. 12 *Jan.* 1567, *The Theſaurare* contra Johne Carkettle, 1 *t. c.* 908.

Anent fewis.

C. I. Of ſetting fewis pertening to inferiour benefices.

BE the law and conſuetude of this realme, quhen ony perſoun is promovit, or provydit to a chanonrie, or benefice of ane cathedrall kirk, being of ane eccleſiaſticall and ſpirituall patronage, wadſet ony landis as pertening to the patrimonie of the ſaid chanonrie or benefice, in few, to ony perſoun or perſounis; the ſamin ſould be done with conſent and aſſent of baith the Biſchop and Patroun of the ſaid kirk, and als of the Chaptour of the ſamin, at the leaſt of the Biſchop or Patroun, or uther haveand his powar, or beand in his place, and of the chaptour of the ſaid kirk; utherwayis the ſamin is of nane availl in the ſelf, and aucht and ſould be reducit. 12 *Decemb.* 1566, *N.* contra David Pitcarne, 1 *t. c.* 853.

ANE

C. II. How kirk landis, pertening to ane personage or vicarage, may be disponit.

ANE Persoun or Vicar havand gleib or kirk landis pertening to his vicarage or personage, may on na wayis set the samin in few, or for lang takkis, without consent of the Patroun thairof, gif thay have ony, albeit the said benefice war annexit to ony cathedrall kirk, and the consent of the Chaptour thairof interponit to the setting of the said few. 19 *Mart.* 1567, *M.* Archibald Douglas, *Persoun of* Douglas *contra the tenentis thairof*, 1 *t. c.* 1352.

C. III. Ane abbay place, with all the fruitis thairof, may not be set in few.

ALL infestmentis of few-ferme, of all and haill ony abbay place, housis, biggingis, zairdis, orchardis, als weill within as without the wallis of the said abbay, togidder with all the fermis, rentis and dewteis of the samin abbay, and advocatioun and donatioun of kirkis, maid and gevin to ony persoun heritablie, and his airis, is of nane availl, force nor effect, and sould be reducit; becausc the samin is not onlie gevin in manifest hurt of our soverane Lord, and his patrimonie, quhome to the nominatioun and provisioun of all abbayis pertenis, as undoutit Patroun thairof: Bot also it is maid and gevin aganis all gude ordour, statutis and lawis, be the quhilk all universall dispositiounis, and speciallie of sic placis, advocatiounis, donatiounis of kirk landis ar defendit, inhibit, forbiddin, and declarit to be of nane avail, force nor effect. 4 *Feb.* 1569. *The King and the Abbot of* Balmerinoch *contra the Laird of* Kynneir. 1 *t. c.* 876.

C. IV. A few may be reducit for non-payment of the few dewtie.

KIRK landis set in few be ony Abbot, or uther ecclesiasticall persoun, may be reducit, and the settar thairof, or his successouris, aucht and sould be restorit *in integrum*, aganis the alienatioun and setting thairof, gif the samin be set with hospitalitie to the settar, and his successouris and servandis, and the fewaris, being requirit thairto, refusis to give the said hospitalitie. *Item*, Gif the fewaris, or ony of thair airis or successouris, ceissis, be the space of twa zeiris, to mak payment of the few-maill, or ony part thairof, contenit in thair few chartour and infestment, albeit na sic special provisioun be maid thairanent in the chartour or infestment. 8 *Mart.* 1525, *Abbot of* Cambuskyneth *contra* David Ramsay. 15 *Jan.* 1533, *Priour of* Charterhous *contra* Thomas Borthwik. 24 *Julij*, 1550, 1 *t. c.* 325.

C. V. Fewis of the propertie may be reducit, for non-payment of the few-maill.

LANDIS pertening to the King, as a part of the patrimonie of his crown, beand set in few-ferme to ony of his liegis, gif the fewar thairof, his airis or successouris, mak not payment of his few-maill to his Hienes, or his Comptrollar; he, his air or successour, quhidder he be major or minor, may be callit at his Hienes instance, and his Comptrollaris, and decernit to have tint and foirfaltit his few-ferme: And the samin landis returnis to our soverane Lord, to be disponit be him in time cuming, as he sall think expedient for his utilitie and proffeit. 5 *Septemb.* 1517, *The King and his Comptrollar* contra *L.* Tulibardin, 1 *t. c.* 387.

IC. VI. Few reducit, gif the fewar contravene the cause quhairfoir the samin was gevin.

THE Kingis landis beand set in few for ony cause or causis, and speciallie for policie to be usit and mantenit within the realme amang his Hienes liegis, gif he to quhome the samin was set, his airis or successouris, destroyis the woddis, growand treis, housis, or big-

biggingis upon the ground, he foirfaltis and tynis his few, with all clame of richt quhilk he had in and to the ſaidis landis; becauſe he fulfillit not the punctis and clauſis contenit in the ſaid infeftment, bot did the contrare of the ſamin, aganis all policie and cauſis quhairfoir the ſaidis landis wer ſet in few. 12 *Maij*, 1540, *The King* contra Laurence Wardrop, 1 *t. c.* 508.

C. VII. Few of kirk landis reducis, *propter non ſolutum canonem.*

LANDIS, rentis, or uther poſſeſſiounis, pertening to the kirk, or ony kirk man, ſet in few-ferme, for certane dewteis to be payit zeirlie, as few-maill, with proviſioun, that gif the fewar, his airis or ſucceſſouris, failzie in payment be the ſpace of thré termis; in that cais the infeftment to be null and of nane availl: Gif it happin the fewar, his airis or ſucceſſouris, to failzie thairanent, he tynis and forfaltis his few, and the landis returnis to the gevar or maker of the ſaid few, or his ſucceſſouris: And mairover, in this cais, the fewar ſould content and pay the byrunnis of his few-maill auchtand be him, for all the termis precedand the reductioun and forfalture of the few. 15 *Jan.* 1533, *The Priour of* Charterhous *contra* Thomas Borthuick, 1 *t. c.* 445.

C. VIII. The conjunct-fear's failzie prejudgis not the air anent the heritage.

INFEFTMENT of land or tenementis, beand gevin to ony man, his wife, thair airis and aſſignayis, with ſpeciall proviſioun contenit in the ſaid infeftment, or zit in ony obligatioun or contract ſeverallie maid to that effect, beirand, that gif the ſaid husband, his wife, or thair airis, failzeit in payment of the ſaid few-maill or annuelrent, contenit in the chartour, at thré termis continuallie togidder; in that cais the ſaid infeftment to be null in the ſelf, and of nane availl; gif efter the husbandis deceis, the wife, quha wes conjunct-fear with him, failzie in payment of the few-maill or annuelrent, all and haill the ſaid infeftment ſould be reducit, and declarit of nane availl, with all that followit thairupon, in ſa far as the ſamin concernit the conjunct-fear's liferent allanerlie; becauſe the fault or treſpas of the conjunct-fear ſould not be prejudiciall to the air. 5 *April.* 1557, *Schir* Johne Maſon *contra* Jonet Maſon, 1 *t. c.* 752.

C. IX. Few reducit, gif the fewar annalzie, contrare the tenour of his infeftment.

LANDIS ſet in few to ony man and his airis, for payment of certane zeirlie few-maill, with expres proviſioun contenit in the infeftment, that it ſall not be leaſum to the fewar, his airis or aſſignayis, to annalzie the ſaidis landis in quhole or in part, without conſent and licence of the ſettar of the few, his airis or ſucceſſouris; gif thay mak alienatioun utherwayis, thay to tyne and forfault the few-ferme and heritabill richt of the ſaidis landis; gif the ſaid fewar, or ony of his airis, cumis in the contrare of the ſaid proviſioun and reſtrictioun, the ſaid ſettar, or his airis, hes juſt actioun and titill for reductioun and recognitioun of the ſaid few. 8 *Julij*, 1569, *The Kingis Advocate* contra Johne Wintoun *and* Alexander Barclay, 1 *t. c.* 873.

C. X. The ſettar reſſavand ony part of the few-maill, may not call for reductioun.

GIF ony ſpirituall or temporall man gevis and ſettis ony landis in few to ony perſoun, for payment of ane ſowme of money zeirlie, as few-maill, or for uther ſervice, gratitude or gude deid to be done to him zeirlie thairfoir; and efter the ſetting of the ſaid few, and date of the chartour, reſſavis ony part of the few-maill, or ony uther

uther dewtie, conforme to the chartour, he thairby ratifyis and aprevis the fewar as his tenant, and thairfoir may not perſew him for reductioun of his few. 28 *Julij*, 1553, *The Biſchop of* Dumblanc *contra* Jonet Chiſholme, 1 *t. c.* 721.

C. XI. Setting within the half of the juſt valour, no cauſe of reductioun.

ALBEIT landis, or uther poſſeſſiounis, be ſet in few, or in tak and aſſedatioun, within the half of the juſt valour of the fruitis thairof, the few or aſſedatioun ſould not be reducit, or declarit of nane avail; becauſe in all fewis or takkis of landis, temporall or eccleſiaſticall, or of teindis, it is requirit allanerlie, to the effect that the alienatioun or tak be ſufficient, that the auld rentall thairof be not diminiſhit, how littill that ever it be, albeit the teindis and landis be zeirlie worth ten times mair nor is contenit in the ſaid infeſtment, few or aſſedatioun. 25 *Maij*, 1542, *The Proveſt of the Quenis college* contra *the Laird of* Balcleuch, 2 *t. c.* 99.

C. XII. It is ſufficient to the fewar to offer lauchfullie his maill.

GIF the fewar offerris lauchfullie, and in dew time, the dewtie contenit in his few chartour, to his Lord, his Chalmerlane, Factour, or ony uther in his name, havand ſufficient powar of him to reſſave the ſamin, he may not be callit for reductioun of his few, for non-payment of the few-maillis and dewteis, ſuppois he mak not conſignatioun of the ſamin. 13 *Maij*, 1556, *The Biſchop of* Murray *contra the Laird of* Kinfaunis, 2 *t. c.* 263.

C. XIII. Of a kirk manis tenent not payand his few-maill.

IT is ſtatute and ordanit, that gif ony man havand landis, or ony uther thing in few pertening to him, and haldin of the kirk, as ſuperiour thairof, dois deſtroy, hurt, or mak the ſamin worſe, or zit delayis or poſtponis, be the ſpace of twa zeiris, to pay the dewteis and ſervice contenit in his infeftment; he tynis and forfaultis the ſamin, and may be removit and put fra the poſſeſſioun thairof; and mairover may be callit and perſewit for the arrerage and byrun dewteis, and for all damnage and ſkaith done be him; and zit nevertheles he hes na actioun nor titill for repetitioun of ony expenſis maid be him upon the ſamin landis, or uther thing, albeit thairby the ſamin was maid better and mair proffitabill. *Iter. Camer. c.* 33. *De obligat. c.* 11.

C. XIV.

THE King, Lordis, Prelatis, Baronis and Fréhalderis, may ſet thair landis in few-ferme. *Ja.* II. *fol.* 42. *act.* 79. 6 *Mart.* 1457.

C. XV.

THAT it be leaſum to our ſoverane Lord to ſet all his landis in few. *Ja.* IV. *fol.* 107. *act.* 125, 126. 11 *Mart.* 1503. *Ja.* V. *fol.* 140. *act.* 97. 14 *Mart.* 1540.

C. XVI.

ANENT confirmatioun of fewis of kirk-landis. *Mar. R. fol.* 181. *act.* 2. 15 *Decemb.* 1564.

Anent tailzie.

C. I. Making of tailzie is leaſum of the law.

INFEFTMENT of tailzie is leaſum be the law of this realme, and the geving and making thairof is not underſtuid to be hurtfull to the Kingis conſcience or ſaul: And thairfoir ony ſpeciall infeft-

ment of tailzie gevin to ony man be the King, in his minoritie, cumis not under the generall revocatioun maid of tailzies gevin be him. 1 *Mart.* 1548, Lauchlan Maklauchlan *contra the Laird of* Lawmond, 2 *t. c.* 332.

C. II. It is not leasum to mak infeftment of tailzie without the Kingis licence.

IT is not leasum to ony Baron, frehalder, or landit man, within this realme, haldand landis immediatlie of the King in cheif, to mak ony chartour or infeftment of tailzie of his landis, in all or in part, without expres consent, licence or confirmatioun of the King: And gif the samin be utherwayis maid, it is of nane avail, force nor effect. 10 *Feb.* 1532, 1 *t. c.* 917.

C. III. Of tailzie maid be the King with the consent of his Regent.

ANE chartour or infeftment of tailzie maid be ony man with consent of the King, beand of les age, within xxi. zeiris, is of nane avail, and sould be reducit, albeit the samin be maid with consent and authoritie of his Grace's tutour or curatour. 18 *Maij*, 1549, *The Quene* contra Jonet Carutheris, 1 *t. c.* 996.

C. IV. Of tailzie maid to ony man, and his airis generallie.

ANE chartour of tailzie maid to ony persoun, and to his airis of tailzie in generall, and not specifyand the airis of tailzie particularlie, is extendit to all airis of tailzie, als weill in the richt line descendand, as in the side line or collaterall. 18 *Junij*, 1566, Donald Cambell *contra* Johne Grahame, 1 *t. c.* 1336.

C. V. Ratificatioun of tailzie gevin be the King in his minoritie.

GIF the King gevis ane infeftment of tailzie, in his minoritie, to ony persoun, and revokis the samin lauchfullie, zit nevertheles, gif he, or his successour, beand of perfeit age, ratifyis and approvis the samin befoir ony actioun of reductioun or declaratour of nullitie be intentit or askit be the airis of line, the samin tailzie is sufficient, be reasoun of the said confirmatioun, and the airis of line ar secludit fra all reductioun thairof in time cuming. 1 *Mart.* 1548, Lauchlan Maclauchlan *contra Laird of* Laumond, 2 *t. c.* 333.

C. VI. Anent breking of tailzie.

ANE infeftment or chartour of tailzie, maid be ony man to ane uther, of ony landis, efter the commoun form and tenour usit in sic chartouris, is in effect brokin, renuncit, dischargit, and maid of nane avail, force nor effect, gif he to quhome the samin is maid, or ony of his airis of tailzie, efter the making thairof, makis resignatioun of the samin landis in the superiouris handis, in favouris of ony man, and his airis quhatsumever, gottin or to be gottin of his bodie; or zit gif he, or ony of his airis, takis new infeftment fra his superiour, of the samin landis, to himself and his airis quhatsumever, or to him and his airis quhatsumever, gottin or to be gottin of his bodie, without ony speciall mentioun thairin of his airis of tailzie; and according to the said infeftment obtenis sasine of these landis, and cumis to the possessioun thairof, and bruikis the samin conform thairto be ane certane space, *Ult. Jan.* 1507, *The King* contra Pat. *Lord* Lindsay. 18 *Jan.* 1564, Donald Cambell *contra Mr.* James Levingstoun, 1 *t. c.* 268. *Item*, Gif ony man be infeft in landis to him and his airis maill, and he gevis thairefter infeftment of the samin landis to ane uther persoun and his airis quhatsumever, sic as conjunct-infeftment to his sone, and his spouse, and to the airis to be gottin betwix thame, with sasine followand thair-

thairupon; the firſt infeftment of tailzie is underſtuid to be brokin and diſſolvit be the laſt infeftment, albeit in the laſt infeftment na ſpecial mentioun was maid of the breking and diſſolutioun of the firſt infeftment. *Ult. Feb.* 1563, *The Quene* contra Robert Ayſon.

Of pertinentis of landis.

C. I. Quhat thingis may be callit pertinentis, and quhat not.

LANDIS may be pertinentis and pendiclis of uther landis, albeit thay ly not contigue to the ſamin, bot within ane lordſchip, and the landis alledgit to be principall, be within ane uther juriſdictioun: And gif ony perſoun wald pruif landis lyand diſcontigue, to be partis and pertinentis of uther landis, it may not, nor ſould not be provin be witneſſis. 6 *Mart.* 1532. 20 *Maij*, 1533, *Sir* Williame Hamiltoun *contra the Maiſter and Erle of* Glencarne, 1 *t. c.* 419. *Item*, Gif ony man be chargit to deliver ony tour, fortalice or place, he aucht and ſould deliver the ſamin, with barnis, byris, ſtablis, and all uther neceſſare houſis pertenand to the ſamin, as pertinentis thairof. 19 *Decemb.* 1554, David Barclay *of* Cullernie *contra* Hercules Barclay, 1 *t. c.* 1183. *Item*, Na landis may be callit pertinentis or pendiclis of ony uther landis, quhilk hes ane ſpeciall ſaſine, or is haldin of ane uther over-lord, 3 *Mart.* 1519, Pat. Wemys *contra* Adame Lindeſay, 1 *t. c.* 394. *Item*, Landis lyand diſcontigue fra uther landis, and not annexit or unite to the ſamin, may not be callit pertinentis thairof, 20 *Feb.* 1538, 1 *t. c.* 1038. *Item*, Landis quhilkis ar expreſſie nominat in ony chartour, inſtrument, or uther evident, with uther landis, may not be callit part, pendicle or pertinent of the ſamin; becauſe na landis, ſpeciallie namit and expreſſit, may cum under the appellatioun of pertinentis, 18 *Mart.* 1535, 1 *t. c.* 1026. *Item*, Ane miln is not comprehendit, nor cumis not under the generall word or appellatioun of pertinentis; becauſe ane miln requires ane ſpeciall and ſeverall ſaſine. 7 *Feb.* 1566, *Lord* Flemyng *contra Lord* Roſs, 1 *t. c.* 1345.

Anent ſaſines.

C. I. Diverſe kynd of ſaſines.

ALL perſounis clamand thame to be air to thair predeceſſouris, of ony landis, and deſirand to be ſaiſit thairintill, aucht and ſould do the ſamin be the ordour uſit and obſervit within this realme, anent the geving of ſaſines, to be gevin be vertue of ane retour, or uther inquiſitioun, declarand him to be narreſt and lauchfull air to his predeceſſour, with ane precept of ſaſine direct furth of the chancellarie thairupon; or ellis he ſould be ſaiſit be ane precept of *clare conſtat*, as quhen the ſuperiour, ather *propriis manibus*, gevis him ſaſine, and he takis inſtrumentis thairupon in the handis of ane Notar-publict, ather gevis ane precept *quod clare conſtabat*, to him quha deſires to be ſaiſit as air to his predeceſſour of thay landis, quhairof he deſires ſaſine; or he ſould be ſaiſit be heſp and ſtapill,

as

as the commoun uſe is within burgh: And gif ony air or airis be ſaiſit utherwayis than as ſaid is, the ſamin, with all that followis thairupon, is of nane avail, and aucht and ſould be reducit. 7 *Feb.* 1569, *N. contra* Johne Ramſay, 1 *t. c.* 901.

C. II. Of ſaſine within burgh.

SASINE gevin within burgh be ane Baillie, befoir nichtbouris, is lauchfull and ſufficient, albeit it be gevin *extra curiam*, without the court. *Leg. burg. c.* 112.

C. III. Of entres upon ſelling or *excambion* within burgh.

GIF ony ſellis his landis, or ony part thairof, he that ſellis the ſamin ſall be within it, and thairefter paſs out of it, and the uther that ſtude out of it, ſall enter within the ſamin, and the ſellar ſall give to the Proveſt or Baillie ane penie for his iſche, and the buyer ſall give ane uther penie for his entres: And gif thay have maid *excambion*, or change of landis, betwix thame, ilk ane of thame ſall give twa penies. *Leg. burg. c.* 55.

C. IV. Saſine ſould not be gevin, without cognitioun.

BE the ſtile and geving of ſaſines within burgh, obſervit and gevin in ſiclike caiſis paſt memorie of man, all ſaſines gevin to ony man, of landis and tenementis, is of nane avail, and may be reducit, gif the ſamin be gevin without cognitioun in the cauſe, and not expremand ony cauſe of richt or titill throw the quhilk the ſamin was gevin to him that is ſaiſit, nather as air thairto be his predeceſſour, nor ony uther perſoun, nor zit be reſignatioun of ony man maid in his favouris. 4 *Feb.* 1530, Aleſon Rouch *contra* William Wallace, 1 *t. c.* 330.

C. V. Saſine ſould not be gevin without a retour, and be precept direct furth of the chancellarie.

GIF ony perſoun raiſis and impetratis ane breif of inqueſt of our ſoverane Lordis chapell, to be ſervit to ony landis or tenementis pertening to him as air, and obtenis and gettis ſervice of the ſaid breif befoir ane Judge, togidder with ſtait, ſaſine, and reall poſſeſſioun of the ſaid landis or tenementis; the ſamin ſaſine, with all that followit thairupon, is null and of nane avail, and aucht and ſould be reducit, gif the ſamin was gevin be ony Schiref, Baillie, or uther Judge or perſoun quhatſumever, of his awin authoritie, without ony retour cuming to the Kingis chapell, and precept of ſaſine direct thairfra. 11 *Julij*, 1498, Elizabeth Quhyte *contra Baillies of* Air, 1 *t. c.* 102.

C. VI. A teſtimoniall of a ſaſine gevin be the over-lord, *propriis manibus.*

QUHEN ony over-lord gevis ſaſine of ony landis to ony perſoun with his awin handis, without ony precept, he aucht and ſould give a teſtimoniall thairupon under his ſeill and ſubſcriptioun manual, gif he can writ, utherwayis under the ſigne and ſubſcriptioun of ane famous and authentick Notar, in maner and forme efter followand: "To all and ſindrie to quhais knawlege thir preſent letteris ſall cum, "I *A. B.* ſuperiour of the landis under-writtin, greiting, in GOD e- "verlaſting: Wit ze, that ane neidfull thing it is, to beir leill witneſ- "ſing to the ſoothfaſtnes, and ſpeciallie in the cauſe or cauſis quhair- "throw the hyding of the veritie may gender prejudice or ſkaith to "the innocentis: Heirfoir it is, that I *A. B.* berand witneſſing "leillelie and trewlie, makis it knawin to zour univerſities, that "the day and dait of thir preſentis, I paſt perſonallie to my landis of "*C.* lyand within the baronie of *D.* and ſchirefdome of *E.* and

"thair,

" thair, upon the ground of the ſaidis landis, I gave and deliverit " heritabill ſtait, ſaſine, and poſſeſſioun corporall of all and haill " my ſaidis landis, with thair pertinentis, to ane honorabill per- " ſoun, *F. G.* as uſe is in ſic thingis to be done, efter the form " and tenour of the chartour maid (or to be maid) be me to him thair- " upon: The quhilk, to all and ſindrie quome it effeiris, I mak knaw- " in, and beiris leill witneſſing thairof be thir preſentis: In witnes of " the quhilk thing, to this my teſtimonial, ſubſcryvit with my hand, " as followis, I have hung my ſeill. At *E. Die, &c. Menſis, &c.* " *Anno Dom. &c.* Befoir thir witneſſis, *&c.*" 13 *Julij*, 1498. 17 *Mart.* 1502, 1 *t. c.* 143.

C. VII. The ſaſine of pertenis to the over-lord.

SASINE beand gevin be ane over-lord to his tenent, of ony landis, be himſelf, with his awin handis, or be his procuratour; the tenent aucht and ſould deliver to his over-lord ane ſaſine ox: And gif he refuſis or poſtponis to do the ſamin, his gudis and geir may be poindit and diſtreinzeit thairfoir be the ſuperiour, without ony ſentence or declaratour gevin thairanent be ony uther Judge. 15 *Julij*, 1533, 1 *t. c.* 935.

C. VIII. Saſine of any next landis.

GIF divers and ſindrie landis be annexit and unitit, ane ſaſine takin at the principall place, or meſſuage, is ſufficient for all and haill the ſaidis landis, and makis thame all to be full, not onlie the ſaid principall place or meſſuage, bot alſo the haill landis unitit and incorporatit, togidder with thair pertinentis, and thairfoir ſtoppis thame to be in non-entres during the ſpace of the ſaid ſaſine. 24 *Mart.* 1563. 3 *Feb.* 1566, *Lord* Flemyng *contra Lord* Roſs, 1 *t. c.* 1315.

C. IX. Anent geving of ſaſine conform to ane aſſignatioun.

GIF ony man makis ane uther his aſſignay to his landis, heritage, or ony part thairof, the aſſignay may not obtene ſaiſine of the ſaidis landis, be vertue of his aſſignatioun, bot be reſignatioun maid in the ſuperiouris handis, be the aſſignant, in his lifetime, be himſelf, or be his procuratour havand powar thairto: And gif the maker of the aſſignatioun happin to deceis befoir the geving of ony ſaſine to the aſſignay, na ſaſine may be gevin or takin thairefter be vertue of the aſſignatioun: And mairover, gif the richteous air of the aſſignant, efter his deceis, be ſervit narreſt and lauchfull air to him of the ſamin landis, befoir ony ſaſine thairof gevin to the ſaid aſſignay, he, *jure præventionis*, excludis the ſaid aſſignay in all time cuming thairfra. 17 *Mart.* 1541, Agnes Lindſay *contra* Jonet Auchinleck, 1 *t. c.* 972.

C. X. Liferent requiris a ſaſine, and diſſolvis not the unioun.

ALL diſpoſitiounis of liferentis, maid *titulo lucrativo*, or utherwayis, requires ane ſaſine. 7 *Junij*, 1575, *The Laird of* Grange *contra Lady* Grange, 2 *t. c.* 375. And attour, gif ony perſoun havand divers and ſindrie landis unitit and annexit in ane barony, ſellis and annalzeis ane part thairof in conjunct-fie or liferent, he diſſolvis and brekkis not the unioun thairby; bot efter the conjunct-fear or liferentar's deceis, the ſamin landis return to the ſaid baronie. 1 *Feb.* 1564, *The Lady* Symontoun *contra the Laird of* Symontoun, 2 *t. c.* 300.

C. XI. SASINES within burgh ſould be gevin be ane Baillie and the Clerkis. *Ja.* VI. *fol.* 20. *act.* 34. 15 *Decemb.* 1567.

C. XII. SASINES upon preceptis of the chancellarie ſould be gevin be the Schiref-clerk, and all utheris be honeſt Notaris, *Ja.* V. *fol.* 128. *act.* 47. 10 *Decemb.* 1540. *Mar. R. fol.* 160. *act.* 7. 20 *Junij*, 1555. *Mar. R. fol.* 177. *act.* 16. 4 *Junij*, 1563.

C. XIII. SASINES ſould be brocht to the chekkar. *Ja.* IV. *fol.* 107. *act.* 124. 11 *Mart.* 1503. *Ja.* V. *fol.* 129. *act.* 49. 10 *Decemb.* 1540. *Mar. R. fol.* 164. *act.* 21. 20 *Junij*, 1555. *Ja.* VI. *parl.* 11. *c.* 64. 29 *Julij*, 1587.

Anent intereſt and skaith.

C. I. Intereſt of landis or houſis wrangouſlie occupyit be ony man.

GIF ony manis landis, houſis, touris, fortalices, or uther gudis, movabill or immovabill, be wrangouſlie occupyit, detenit, or with-haldin be ony uther man, the awner thairof hes gude richt and juſt actioun aganis the with-halder of the ſaidis landis or gudis, for the damnage, ſkaith and intereſt quhilk he may ſufficientlie prove that he ſuſtenit throw the wanting of the proffeitis of the ſaidis landis or gudis, in his default quha unjuſtlie occupyit the ſamin, as ſaid is. 21 *Feb.* 1592, 1 *t. c.* 90.

C. II. Intereſt be reſſoun of infeftment of landis, promiſit and not fulfillit.

GIF ony perſoun bindis and obliſſis him to infeft ane uther in certane landis, at a certane day, and reſſavis thairfoir ony gude deid, or ſowme of money; gif he poſtponis, delayis, or refuſis to do the ſamin, beand requirit thairto, he to quhome the ſaid obligatioun is maid hes juſt richt and actioun, at his awin pleaſour and will, a-ther to call and perſew the uther partie for fulfilling of the ſaid obligatioun, or ellis for reſtitutioun of the money or uther gude deid gevin thairfoir: And in baith the ſaidis caiſis, *viz.* quhidder he perſew for fulfilling of the obligatioun, or for the reſtitutioun of the money or gude deid, it is leaſum to the perſewar to call and perſew for the coiſtis, damnage, ſkaith and intereſt quhilk he hes ſuſtenit throw the wanting of the ſaid infeftment, and for the availlis and proffeitis quhilk he micht have had of the landis, gif he had obtenit the ſamin at the term contenit in the ſaid obligatioun. *Et generaliter, ſi quis ſe facturum aliquid promittit, et non facit, tenetur ad intereſſe ſolvend.* 12 *Novemb.* 1561, George Reul *contra* Archibald *Erle of* Angus. 17 *Mart.* 1510, Mathou Auchinlek *contra* Johne Kinnaird, 1 *t. c.* 165.

C. III. The ſovertie beand poindit, hes gude actioun for the intereſt.

GIF ony man becum cautioner and ſovertie for ane uther, and his gudis, movabill or immovabill, be compryſit and diſtreinzeit be reſſoun of the ſaid obligatioun of ſovertie; he, his airis and ſucceſſouris, hes gude richt and actioun aganis the principall debtour, not onlie for the ſowme under the quhilk he became cautioun, and is poindit for, bot alſo for the damnage, ſkaith and intereſt ſuſtenit be him throw the appryſing and poinding of his landis or gudis for the cauſe

cauſe foirſaid. 16 *Feb.* 1505, Louis Maitland *contra* George *Lord* Seytoun, 1 *t. c.* 237.

C. IV. *Intereſſe conventum.*

GIF ony man be obliſt to ane uther, to do, or not to do, ane deid helpfull, or hurtfull, to him, under ane certane pane, convenit and aggreit upon betwix thame, in cais he failzie: And gif he happinis to do thairefter in the contrare, he ſall be haldin to pay to the uther partie the foirſaid pane, as damnage and intereſt, ſpeciallie and expreſlie aggreit upon betwix thame. 2 *Decemb.* 1502, George Flemyng *contra* George *Lord* Flemyng, 1 *t. c.* 251.

C. V. Intereſt of evidentis detenit be ony perſoun.

GIF ony man fraudfullie or wrangouſlie detenis and with-haldis ane uther manis chartouris, evidentis, or uther writtis, or zit hes deliverit the ſamin to ony uther perſoun, and reſſavit gude deid thairfoir; he aucht and ſould reſtore, renunce, and deliver agane all that quhilk he hes reſſavit, quhidder it be ſowmis of money, infeftment of landis, or ony uther gude deid, togidder with all coiſtis, ſkaith, damnage and intereſt ſuſtenit be the awner of the ſaidis evidentis and writtis, throw the abſtracting and wanting thairof. 26 *Feb.* 1528, James Auchinleck *contra* George Roſs, 1 *t. c.* 324.

Reſtitutio in integrum.

C. I. For quhat cauſis ane may be reſtorit *in integrum.*

IT is leaſum to ony perſoun to gainſay or cum aganis his awin deid, for thir cauſis: 1. Gif he be of les age, he is not obliſt, be reſſoun of ony thing done be him, bot gif he did the ſamin be authoritie and conſent of his tutouris and curatouris. 2. Gif he be in priſoun, in bandis, in the handis and powar of reiffaris, or of his enemeis, nathing done be him may hurt or prejudge him; becauſe he is underſtuid to do the ſamin be juſt feir or dredour, quhilk may fall in ane conſtant man. 3. Gif he be lunatique, wod and furious at all times, or at certane times, nathing done be him, the time of the ſaid infirmitie, bindis and obliſſis him be the law; it beand ſufficientlie provin that he was lunatique or furious at the time of the making of the ſaid obligatioun, *Lib.* 4. *c.* 53. *Quon. attach. c.* 41.

C. II. Reſtitutioun be reſſoun of minoritie; and firſt, of thingis done to the minoris hurt enorm, and ſkaith.

ALL contractis, bandis, obligatiounis, alienatiounis, aſſignatiounis, acquittances, diſchargis, comptis, rekningis, and all uther thingis done and maid be minoris in thair les age, to thair enorm hurt and ſkaith, ar of nane avail, and aucht to be annullit, caſſit and retractit thairfoir, albeit the ſamin be done be authoritie of thair tutouris and curatouris: And the ſaidis minoris, or, efter thair deceis, thair airis, albeit thay be *majores*, and of perfeit age, ſuccedand in thair place, aucht and ſould be reſtorit, *in integrum*, aganis the ſamin, gif lauchfull revocatioun thairof be maid, and reſtitutioun askit within term of law, *viz.* befoir the ſaid minor be of xxv. zeiris. 6 *Maij*, 1553, *The Laird of* Cranſtoun-Riddel, *contra Dame* Jonet Betoun. *Ult. Julij*, 1557. 20 *Mart.* 1555, Pat. Congiltoun *contra* An. Congiltoun, 1 *t. c.* 722.

C. III. How a minor ſould uſe the

GIF ane minor makis ony alienatioun, without the conſent of his tu-

privilege of reſtitutioun *in integrum.*

tutouris and curatouris, or without the authoritie of ane Judge, he may not, be way of actioun, allege the ſamin to be null be reſſoun of his minoritie, and becauſe the ſamin was maid without authoritie of his tutouris, curatouris, or of ony Judge, and na proffeit or gude deid reſſavit be him thairſoir: Bot he aucht and ſould libell reſtitutioun *in integrum*, be reſſoun of his enorm leſioun, hurt and ſkaith. 28 *Novemb.* 1565, Johne Douglas *contra* George Forman, 2 *t. c.* 311.

C. IV. Anent alienatiounis maid be ane minor.

ALL alienatiounis and diſpoſitiounis maid be ane minor, without conſent of his tutouris or curatouris, to ony perſoun, of his landis, heritage or tenementis, or ony his movabill or uther gudis and geir, quhairby he is enormlie hurt and ſkaithit, is of nane availl, and may be reducit be the pupill, beand within the zeiris of reſtitutioun *in integrum*; except cognitioun be takin be ane Judge, anent the making of the ſaid diſpoſitioun, and his decrete and authoritie interponit thairto; *quia de jure alienatio prædiorum ruſticorum, ſeu urbanorum, per minorem facta, abſque decreto judicis, cenſetur ipſo jure nulla, ſaltem annullanda, cum omnibus inde ſequutis & ſequendis.* *Pen. Jan.* 1552, Johne Thomſon *contra* Rauff Dryden, 1 *t. c.* 715.

C. V. Anent contractis maid be ane minor, with interpoſitioun of ane aith.

ALL contractis, obligatiounis, and utheris actis quhatſumever, maid be ane pupill, without conſent of his tutouris and curatouris, is of nane avail, and null, be way of exceptioun, and may be reducit, albeit the ſamin be not onlie regiſtrat in the buikis of ane ordinar Judge; bot alſo, ſuppois the pupill ſweir and mak faith never to cum in the contrare thairof, bot faithfullie and trewlie to fulfill and obey the ſamin in all punctis; becauſe his aith bindis and obliſſis him not, he beand ane pupill, within the age of fourtene zeiris, 7 *April.* 1558, 1 *t. c.* 1033. And alſo, like as he micht have bene circumvenit and inducit to mak the ſaid diſpoſitioun in his minoritie, ſiclike he micht have bene circumvenit and inducit to mak the ſaid aith at the ſamin time. 11 *Feb.* 1567, *The Laird of* Barnbougall *contra* David Hamiltoun, 2 *t. c.* 329.

C. VI. Of a minor conſentand to a compromit of ane decrete arbitrall.

ANE minor, and ſpeciallie ane pupill, being *proximus infanti*, of nyne or ten zeiris auld, not authorizit with ony tutouris or curatouris, cannot conſent to ane compromit, nor zit can abyde at the decrete of ane Judge arbitrall: And gif ony compromit or decrete be maid or pronuncit aganis him, utherwayis than ſaid is, the ſamin is of nane avail, and he aucht and ſould be reſtorit *in integrum*, aganis the ſamin. 19 *April.* 1554, Andro Law *contra* Alexander Law, 1 *t. c.* 733.

C. VII. Of ane decrete gevin aganis ane minor.

ALL proceſſis, decretis, or ſentences led, deducit or gevin aganis ony minor, and his tutouris, is of nane avail, and aucht and ſould be reducit, as gevin aganis him for null defence, gif the ſaidis tutouris wer not lauchfullie ſummonit, nor callit for the ſaid minoris defence in the ſaid matter, in contrare the form and courſe of the commoun law. 11 *Feb.* 1499, David Kennedie *contra* Johne Kennedie *of* Blairquhan. 10 *Decemb.* 1507, Mongo Hamiltoun *contra* Robert Lauder, 1 *t. c.* 180.

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C. VIII. The time of revocatioun grantit to ane minor, *viz. quadriennium utile.*

ANE minor, of quhatſumever eſtait and conditioun, efter his age of twentie ane zeiris, hes four zeiris complete gevin and grantit to him, to revoke and agane call ſolemnitlie befoir ane Judge, all thingis done be him in his minoritie, befoir his age of xxi. zeiris, to his hurt, damnage and ſkaith; except, efter his perfeit age of xxi. zeiris, he ratifie, confirm and appreve the ſamin. The quhilk privilege aucht and ſould be extendit to the Kingis Grace, als weill as to utheris, 15 *Feb.* 1503, *The King* contra *the Erle of* Buchane. 17 *Julij*, 1517, Andro Bunſhe *contra* Walter Bunſhe. 16 *Dec.* 1532, 1 *t. c.* 135. And ſiclike he, nor his airis, ſall never be heard to revoke or perſew for reductioun of ony thing done be him within his minoritie, nor zit to ſeik reſtitutioun aganis the ſamin, gif he, efter the ſaid perfeit age of xxi. zeiris, haldis his toung, *per totum dictum quadriennium*, and ſeikis na reſtitutioun *in integrum*, befoir his age of xxv. zeiris compleit; becauſe he, be reſſoun of his ſa lang ſilence and taciturnitie, is tacitlie and in effect underſtuid to ratifie and appreve all alienatiounis and diſpoſitiounis maid be him of befoir, for quhatſumever cauſe, helpfull or hurtfull unto him. 1 *Junij*, 1565. *Ult. Julij*, 1566, Johne Blantyre *contra* Robert Carnegie. 16 *Mart.* 1548, Johne Steill *contra* Johne Hamiltoun, 1 *t. c.* 837.

C. IX. Diſpenſatioun grantit to a minor anent his les age.

ANE minor beand maill, and of twentie zeiris of age, and ane minor beand femaill, of auchtene zeiris of age, may ask diſpenſatioun for thair les age fra the King; and thay obtenand the ſamin, ar underſtuid to be *majores*, and of perfeit age; ſwa that thay may not ſeik reſtitutioun *in integrum*, be reſſoun of minoritie, contrare ony thing done be thame efter the obtening of the ſaid diſpenſatioun. 16 *Mart.* 1458, Johne Steill *contra* Johne Hamiltoun, 2 *t. c.* 190.

C. X. Na perſoun may revoke that quhilk he dois, efter his perfeit age of xxi. zeiris.

ANE minor, maill or femaill, of twentie ane zeiris complete, is of perfeit age to contract with ony perſoun, and to annalzie his landis, heritage, or uther gudis. And ſuppois he be enormlie and heavilie hurt thairby, he may not ſeik reſtitutioun *in integrum*, be reſſoun of minoritie, 16 *Mart.* 1548, Johne Steill *contra* Johne Hamiltoun, 2 *t. c.* 189. And thairfoir gif ony perſoun, beand completlie paſt the age of twentie ane zeiris, makis ony mutatioun, alienatioun, or uther diſpoſitioun of his landis, gudis or geir, to his enorme hurt or ſkaith, he nor his air nor ſucceſſour, quhidder he be minor or major, ſall never be heard efterwart to call or perſew for reductioun thairof, or for reſtitutioun *in integrum* aganis the ſamin. 1 *Junij*, 1565, Johne Blantyre *contra* Robert Carnegie. *Ult. Julij*, 1566, *inter eaſdem perſonas*, 1 *t. c.* 836.

C. XI. Reſtitutioun *in integrum* not onlie grantit to the minor, bot alſua to his air and ſucceſſour.

GIF ony perſoun, beand minor, makis ony diſpoſitioun of his landis, gudis or geir, movabill or immovabill, to his hurt and ſkaith, and thairefter deceiſis within his minoritie, befoir he be of the age of twentie ane zeiris complete, levand behind him an air of les or of perfeit age; the air aucht and ſould ſeik reſtitutioun *in integrum*, within ſic ſpace of time and zeiris as the ſaid minour, his predeceſſour, micht have done of the law, gif he had happinit to remane on life: And gif the ſaid air intentis and executis not ſummoundis

of reſtitutioun within the ſaid ſpace of time and zeiris, he, his airis nor ſucceſſouris, ſall never be heard in ony time cuming to do the ſamin. 1 *Junij*, 1565. *Ult. Junij*, 1566, John Blantyre *contra* R. Carnegie, 1 *t. c.* 838.

C. XII. Offer befoir reſtitutioun.

ANE minor deſirand reſtitutioun *in integrum*, aganis ony alienatioun maid be him in his minoritie, aucht and ſould reſtoir and offer that quhilk he reſſavit for making of the ſaid alienatioun, utherwayis ſould not be heard to ſeik reſtitutioun. 9 *Feb.* 1567, *The Laird of* Barnbougall *contra* David Hamiltoun, 2 *t. c.* 328.

C. XIII. Reſtitutioun be reſſoun of feir and dredour.

GIF ane man, throw juſt feir and dredour, gevis ane diſcharge or renunciatioun, he may at his awin plefour ſeik reſtitutioun be way of actioun or exceptioun. 4 *Decemb.* 1546, *The tenentis of* Cokburneſpeth *contra* Home, 2 *t. c.* 170.

C. XIV. Reſtitutioun for deidis done in captivitie and priſoun.

GIF ony man maiſterfullie takis ane uther, and haldis his perſoun in captivitie, unto the time he obtene ony contract, obligatioun, infeftment, or alienatioun of his landis, gudis or geir, to himſelf, or to ony uther perſoun; the ſamin is of nane avail, force nor effect, and ſould be reducit be reſſoun of juſt feir and dredour, at the inſtance of him quha wes compellit to mak the ſamin, or ony of his airis or ſucceſſouris, aganis him quha compellit the ſamin to be maid, his airis or ſucceſſouris; or zit aganis him in quhais favouris the ſamin wes maid, and is in poſſeſſioun of the ſamin gudis, geir or landis. 2 *Mart.* 1516, Thomas Bryſone *contra* Johne Creichtoun. 5 *Mart.* 1542, Thomas Glencors *contra* Williame Kilpatrik, 1 *t. c.* 362.

C. XV. Anent ony thing done for feir of life.

ALL obligatiounis, contractis or infeftmentis, maid and gevin be ony perſoun for ſaiftie and preſervatioun of his awin life, the life of his wife, his bairnis, brether, kinniſmen, or ſpeciall freindis, beand in captivitie, or under the danger and peril of thair lives, in ane uther mannis handis or powar, togidder with all reſpeitis or remiſſiounis obtenit fra the Kingis Hienes for the cauſe foirſaid, in favours of ony perſoun or perſounis, aucht and ſould be caſſit, annullit, and declarit of nane avail, as done for juſt feir and dredour, that may fall in ane conſtant man: And thairfoir the maker or obtenar of the ſamin is not obliſt and haldin of the law to fulfill and obey the tenour thairof, bot aucht and ſould be reſtorit *in integrum*, like as the ſamin had never bene maid nor obtenit. 19 *Junij*, 1525, *The Lord* Flemyng *contra the L.* Drummelzear, 1 *t. c.* 397.

C. XVI. Of diſpoſitioun maid be the Kingis command throw juſt feir and dredour.

GIF ony of our ſoverane Lordis liegis is inducit and compellit be his Hienes, throw juſt feir and dredour, to mak and give ony alienatioun, infeftment, or diſpoſitioun to his Hienes and his ſucceſſouris, *ad perpetuam remanentiam*, or utherwayis, of his landis, gudis or geir, or ony part thairof; the maker thairof, and his airis, hes juſt actioun to call for reductioun of the ſamin aganis his Hienes ſucceſſour, quha, albeit he be minor, and of les age, aucht and ſould anſwer thairintill; *quia abſurdum eſt, et contra rationem, quod minor ex juſto metu, vel ex ſuo ſuorumve dolo vel fraude, fieret locupletior, et res aliqua apud eum maneret, uſque ad perfectam ejus ætatem*

tatem et majoritatem; ſeing the actioun is foundit upon juſt feir and dredour, quhilk micht fall in ane conſtant man; quhilk dredour continewit and indurit until his Hienes deceis, quha was the cauſe thairof; ſwa that, induring his lifetime, the maker of the ſaid infeftment or diſpoſitioun durſt not perſew for reductioun thairof. 13 *April.* 1543, *The Erle of* Mortoun *contra the Quene and hir tutour*, 1 *t. c.* 580.

ITEM, Gif ony man is preiſſit and ſoliſtit be the King, or chargit to ward, except he give and mak infeftment, alienatioun or diſpoſitioun of his landis, gudis or geir; or zit gif he be chargit be his Hienes to do or ſubſcrive the ſamin, with certificatioun, and he failzie thairin, he ſall repent it: The ſamin, gif it be maid ony wayis to his Hienes, or zit to ony of his liegis, for the cauſis foirſaid, is underſtuid to be maid throw juſt feir and dredour that may fall in ane conſtant man, and may thairfoir be reducit, and declarit of nane avail. 14 *April.* 1543, *The Erle of* Mortoun *contra the Quene.* 24 *Julij*, 1553, *The Laird of* Dundas *contra the Laird of* Cragiehall, 1 *t. c.* 581.

C. XVII. Of diſcharge gevin throw feir and dredour.

GIF ony man perſew ane uther for intromiſſioun, and withhalding of his gudis or geir, or for ony uther cauſe, and the defendar alledge that he obtenit ane diſcharge thairof fra the perſewar; the ſamin diſcharge is not ſufficient, nor ſould be admittit, gif the perſewar, be way of reply, allege and preve that he gave the ſamin throw juſt feir and dredour; becauſe the time of the geving of the ſamin, he wes in danger of the ſaid defendar, or his complices, aſſiſtaris, or partakeris, and the place quhairin the ſaid diſcharge was maid was within the boundis quhair the ſaid defendar, be himſelf or utheris, micht have done him bodilie harm. 14 *Mart.* 1504, R. Menzeis *contra M.* An. Caldwall. 7 *Mart.* 1505, *M.* Falſyde *contra* Ja. Levingſtoun, 1 *t. c.* 217.

C. XVIII. Of reſtitutioun *in integrum*, be reſſoun of fraud and deceipt.

ALL contractis, infeftmentis, or obligatiounis quhatſumever, maid betwix twa parties, quhairin the ane of thame is inducit to mak or give the ſame be deceipt or fraud uſit be the uther partie; he that is deceivit and fraudfullie hurt, aucht and ſould be reſtorit *in integrum*: And the ſamin contract, infeftment or obligatioun, as procedand fra fraud and deceipt, aucht and ſould be decernit of nane avail, and reducit, 7 *Feb.* 1516, Andro Hervie *contra* Henrie Levingſtoun, 1 *t. c.* 625. Becauſe all contractis, infeftmentis, obligatiounis, or uther writtingis, maid be manifeſt fraud, guyle, or deceipt, and ſpeciallie quhair the ſamin fraud may appeir be evident preſumptioun and circumſtancis, is of nane avail, and aucht and ſould be reducit. 23 *Julij*, 1562, Alexander Dalmaquhoy *contra* Alexander Hamiltoun, 1 *t. c.* 1017.

C. XIX. *Mendax precator carere debet impetratis.*

GIF ony man preſentis himſelf to the Kingis Hienes, or his Commiſſioneris, makand mentioun that he hes obtenit the gude will and favour of ane kindlie tenent, dwelland on the Kingis rowmis or propertie, and thairthrow impetratis few or takkis of the ſaid rowme; the ſamin not beand of veritie, the obtenar thairof aucht to tyne all richt and takkis grantit to him, and to devoid and red

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the rowme, and pay the expenſis to the kindlie tenant, according to his pleaſour, 12 *Octob.* 1478, *The Kingis Advocate* contra Williame Cuming. 3 *Feb.* 1540, 1 *t. c.* 13. *Item*, Gif ony man makis narratioun to the Kingis Hienes, that landis pertening to his Grace payis ſa mekle maillis, fermis, cuſtumis, or uther dewteis, and obtenis fra his Grace heritabill infeftment thairof for payment of the ſamin dewteis, togidder with ſumquhat mair, in augmentatioun, as he alledges, of the rentall; and it be knawin and provin efterwart that the ſamin landis payit ma fermis, maillis or dewties be zeirlie rentall to his Hienes; the ſaid infeftment, with all that hes follow-it thairupon, may be reducit, and declarit of nane availl, as maid in manifeſt diminutioun of our ſoverane Lordis rentall, and upon ſiniſtrous narratioun maid be him to quhome the ſamin was gevin; *qui, tanquam mendax precator, carere debet impetratis.* 20 *Maij*, 1542, *The King* contra David Betoun, *ſone naturall to the Cardinall.*

C. XX. Of alienatioun maid in defraud of the creditour, efter the compryſing.

GIF ony creditour, be reſſoun of debt auchtand to him, compryſis his debitouris landis, tenementis, or uther gudis and geir, and efter the ſamin compryſing the debtour ſellis, annalzies, or utherwayis diſponis to ony uther perſoun the gudis or landis compryſit; the ſamin alienatioun and diſpoſitioun, maid, as ſaid is, efter the day and dait of the ſaid compryſing, is of nane avail, and aucht and ſould be reducit, caſſit and annullit, as done in defraud of the creditour. 27 *Junij*, 1492, James Ramſay *contra* Henrie Wardlaw.

C. XXI. Of alienatioun in defraud of the creditour, efter the pronuncing of the decreit.

ALL creditouris, or ony uther perſounis obtening ane decrete befoir ony Judge aganis ony man, decerning him to content and pay to him ony debt or ſowmis of money; and gif the debtour aganis quhome the ſaid decrete is obtenit, befoir the day and dait of the ſamin, ſall annalzie, diſpone, or put away fra his ſaid creditour, his landis, tenementis, or uther gudis and geir, movabill or immovabill, ſwa that he was not reſponſal nor ſtreinzeabill in uther gudis and landis, at the time of the making of the ſaid alienatioun, nor zit ſenſyne; the ſaid diſpoſitioun or alienatioun is of nane avail, force nor effect; and the ſamin, with all that followit thairupon, aucht and ſould be reducit, as done and maid efter the dait of the decrete, in defraud and hurt of the creditour obtenar thairof. *Pen. Mart.* 1503, Jonet Kennedie *contra* Johne Somervill *of* Cambuſnethane. 20 *Julij*, 1546, 1 *t. c.* 147.

C. XXII. Of alienatioun maid in defraud of the creditour *poſt litem motam.*

GIF ony man intentis ſummoundis, and executis the ſamin aganis ony uther, for ony actioun or cauſe he hes to lay to his charge; and thairefter he quha is ſummonit ſellis and annalzeis his landis to his ſone, freind, kinniſman, or ony uther perſoun quhatſumever; the ſamin alienatioun is of nane avail, force nor effect, and may be reducit; becauſe the ſamin was maid be the debtour, *lite pendente*, efter the executioun of the ſummoundis upon him in defraud of the creditour, he not havand movabill gudis ſtrenziabill for the debt, auchtand be him to his ſaid creditour: And thairfoir the landis annalzeit be him in maner foirſaid may be compryſit be the creditour, to the avail and quantitie of the debt auchtand to him, notwithſtanding ony infeftment or diſpoſitioun maid in maner abone ex-

expremit. 19 *Mart.* 1529, Alexander Innes *contra the Lord* Oliphant. 7 *Decemb.* 1528, 1 *t. c.* 345.

C. XXIII. Of alienatioun or infeſtment maid efter the decreit.

GIF ony perſoun obtenis ane decreit of ony ſoumis of money, or uther debtis, aganis ane uther; and he quhome aganis the ſamin is obtenit, (efter the obtening thairof) gevis ony infeftment of his landis, or makis ony aſſignatioun of his gudis movabill or immovabill, reverſiounis, or ony uther richt pertening to him, to his ſone, or to ony uther perſoun, quhidder he be *conjuncta perſona* or not, ſwa that be the making thairof he is not reſponſal to his creditour for the debt recoverit aganis him; all and haill the foirſaid infeftment or aſſignatioun is of nane avail, force nor effect, and aucht and ſould be reducit, as done in defraud of the creditour. 4 *Maij*, 1531, Marjorie Mouat *contra* Alexander Kynnaird, *Mr.* Johne Spens *of* Marieſtoun *contra* Johne Chalmer. 4 *Aug.* 1525, *Lord* Fleming *contra* Drummelzear. 22 *April.* 1553, Johne Waterſtoun *contra the L. of* Teiling.

C. XXIV. Alienatioun efter inhibitioun.

INHIBITIOUN being raiſit be ane man aganis ane uther, and he lauchfullie chargit, ather perſonallie or at his dwelling-place, conforme thairto, and ane copie deliverit, as uſe is in ſic caiſis; and thairefter, as uſe is, the ſame beand be oppin proclamatioun publiſht at the mercat cros of the head burgh of the ſchire quhair the landis lyis; or zit gif the ſamin be oppinlie proclamit, as ſaid is, and thairefter intimat to him perſonallie, or at his dwelling-place, makand intimatioun to all our ſoverane Lordis liegis, that nane of thame tak upon hand to buy, or tak in wodſet, ony landis, heritage, or ony maner of takkis fra the ſaid perſoun, or buy fra him ony uther gudis, movabill or immovabill, quhatſumever; with certificatioun to thame, and thay do in the contrare, the ſamin ſall be declarit null, and of nane avail; gif he aganis quhome the ſaid inhibitioun is ſervit, efter the publicatioun thairof, mak ony alienatioun of his landis, gudis or geir, ſwa that at the time of the making thairof, or efter, he is not reſponſal nor ſtreinzeabill to his creditour in uther landis, gudis or geir: All and haill the ſaidis alienatiounis and diſpoſitiounis ar of nane avail, as done *in fraudem creditoris*, and thairfoir ſould be reducit. Bot infeftmentis, alienatiounis or diſpoſitiounis maid be the debtour befoir the inhibitioun be publiſht and proclamit, or zit maid efter the ſamin, for fulfilling of ony obligatioun maid befoir the day and dait of the contract or obligatioun quhairupon the inhibitioun procedit, ar ſufficient of the law, and ſould not be reducit be reſſoun of the ſaid inhibitioun. 20 *Julij*, 1541, Thomas Broun *contra* Alexander Scot. 3 *Feb.* 1540, 14 *Decemb.* 1540, Elizabeth Gordoun *contra* Adame Lindſay. 17 *Maij*, 1566, Alexander Guthrie *of* Halkertoun *contra* Williame Arnot. *Pen. Feb.* 1567, *The Laird of* Drumlanrig *contra* Marion Carutheris. 10 *Julij*, 1568, Alexander Biſſet *contra the Maiſter of the hoſpitall of* Burdeaux, *and M.* Patrik Biſſet *his Factor, and Procurator for his intereſſe*, contra Margaret Anderſone. 26 *Junij*, 1564, Herbert Murray *contra* George Macghie, 1 *t. c.* 844.

Anent interdictioun.

C. I. Ane beand interdictit, may not annalzie without his interdictoris conſentis.

ONY perſoun may cum willinglie in preſence of the Lordis of counſall, and be thair authoritie and decreit be interdictit fra alienatioun, diſpoſitioun, or making of ony takkis of ony his landis and heritage, bot be expreſſe conſent and aſſent of certane of his kinniſmen and freindis, quhome he pleiſis to name, as maiſt convenient for that effect: And gif the Lordis interponis thair authoritie with decreit irritant thairto, and letteris of publicatioun be dewlie execute, conform to the ſamin, all alienatiounis, diſpoſitiounis, or lang takkis, maid, ſet or gevin be the ſaid perſoun, without conſent of his ſaid freindis, ar of nane avail, force nor effect, and aucht and ſould be reducit. 20 *Junij*, 1532. 29 *Jan.* 1532, 1 *t. c.* 669.

C. II. Quhair publicatioun of interdictioun ſould be maid.

THE Lordis letteris of publicatioun paſt upon ane interdictioun aganis ony man, and execute at the merkat-cros of *Edinburgh* allanerlie, the ſamin executioun, and indorſatioun thairof, is null, and of nane avail, gif he quha was interdictit dwelt at the ſamin time within ane uther juriſdictioun and ſchirefdome; becauſe all publicatiounis and interdictiounis aucht and ſould be maid at the merkat-cros of the heid burgh or town of the ſchirefdome, or uther juriſdictioun, quhair the perſoun interdictit dwellis in the mean time, 18 *Mart.* 1554, Francis Urquhart *contra* Robert Mitchelſon, 1 *t. c.* 1187. *Item*, Gif ony man be interdictit at ony uther manis inſtance, or of his awin conſent and proper motive, befoir ane Judge, (and letteris of publicatioun be paſt and execute thairupon) to annalzie his landis, annualrentis, heritage, or ony part thairof, and he, within the time of interdictioun, mak ony alienatioun or diſpoſitioun thairof to ony perſoun or perſounis; the ſamin is of nane avail, and aucht and ſould be reducit be him, and his freindis, at quhais inſtance the ſaid interdictioun is maid, and he to be reſtorit *in integrum*, and put in ſiclike eſtait as he was befoir the diſpoſitioun. 11 *Decemb.* 1522, Andro Elphingſtoun *contra* James *Erle of* Mortoun, 1 *t. c.* 368.

C. III. The form and effect of interdictioun.

ONY man, for his weill, and preſervatioun of his landis, gudis and geir, may, in preſence of ane Judge, compeir perſonallie, or be his procuratour, havand ſufficient powar and mandat to that effect, and interdict himſelf fra all kind and maner of alienatioun of his landis and heritage, or ony part thairof, or making of lang takkis thairof, ather *ſimpliciter* or utherwayis, till a certane day, except the ſamin be done and maid with the conſent of ony freind or freindis, quhome he pleaſis to name to that effect; the quhilk beand done, and oppin publicatioun maid thairof, as effeiris, all diſpoſitiounis maid be him thairefter, without the ſaid freindis conſent, is of nane avail, and aucht and ſould be reducit, unles the ſamin be maid efter the expyring and iſchue of the ſaid interdictioun; or except the ſamin be louſit be ane ordinar Judge, for ane reſſonabill cauſe, and proffitabill to him that wes interdictit. 4 *Feb.* 1503, Hew Adamſon *contra* James Adamſon. 11 *Mart.* 1532, 1 *t. c.* 920.

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C. IV. Of him quha declaris to the partie buyar that he is interdictit.

GIF ony man beand interdictit ſellis and annalzies ony of his landis to ane uther, and at the time of the alienatioun declaris and ſchawis to that uther that he is interdictit; in this cais, that uther buyis the ſaidis landis upon his awin peril, and may not ſeik warrandice thairof fra the ſellar of the ſamin in ony time cuming. 10 *Mart.* 1557, *The Laird of* Bonytoun *contra the Erle of* Crawfurd, 1 *t. c.* 1215.

C. V. Interdictioun may be louſit in ane part, and remane in the reſt.

INTERDICTIOUN maid be ony man in favouris of his air, or ony uther perſoun, anent the alienatioun or diſpoſitioun of his landis, heritage, rowmis, takkis, ſteidingis, or poſſeſſiounis, may be lowſit and relaxit for ane reſſonabill cauſe, at the diſcretioun of a Judge, aither in haill or in part thairof; the ſamin interdictioun nevertheles ſtandand unlouſit anent the remanent punctis contenit thairintill. 26 *Jan.* 1534, *The Laird of* Carbie *contra N.* 1 *t. c.* 465.

C. VI. Interdictioun may not be louſit, except the partie be callit.

INTERDICTIOUN beand lauchfullie maid, at the inſtance of divers and ſindrie creditouris, upon ane perſoun, the ſamin may not be louſit or reſcindit be ane Judge, without thair ſpeciall conſent, at the leaſt quhill thay be callit to that effect. 15 *Feb.* 1537, 1 *t. c.* 1030.

Anent chartouris and evidentis.

C. I. Vices and faultis of a chartour.

THE vices and faultis of ane chartour ar thir: 1. The changing and mutatioun of letteris, as quhen S. is written for C. 2. Changing of perſounis proper namis; as gif ony perſoun in ane part of the chartour be richtlie namit be his awin name and ſirname, and in ane uther part wrangouſlie callit be ane uther name or ſirname. 3. Wrang or incongruous language or Latine. 4. Raſure, quhilk ſould be cheiflie eſchewit in four places, *viz.* in the proper namis or ſirnamis; in the nombre of the ſowme; in the dewtie; and in the date. 5. Interlining. 6. Cancellatioun, riving or cutting. 7. Wrang pointing of periodis or ſentences. 8. Diverſitie of hand-writtis. 9. Wrang maner of writing be notis and figures, as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, *&c.* the quhilkis ſould be writtin at lenth, thus, *ane*, *twa*, *thré*, *four*, *&c.* 10. The wanting of the ſeill, quhilk ſould not be a procurit ſeill, bot the proper ſeill of him quha makis the chartour or infeftment. 11. The wanting of a ſaſine; for the chartour is of nane avail, gif na ſaſine follow thairupon. 12. The abſence of the parties at the time of the taking and geving of the ſaſine. *Item*, Gif the witneſſis that war preſent at the geving of the ſaſine be not ſpeciallie namit and expremit in the inſtrument of ſaſine. *De exceptionibus*, *c.* 18. *De cartis*, *c.* 13. *fol.* 497.

C. II.

THAT na faith be gevin to evidentis ſeillit without ſubſcriptioun of the Principal or Notar. *Ja.* V. *fol.* 140, *act.* 98. 14 *Mart.* 1540.

ANE

C. III. Of brint or ſpilt evidentis.

ANE chartour, ſaſine, or uther evident, being be chance brint, ſingit be the fire, ſcrumpillit, or the ſeil thairof meltit and brokin in ſic ſort as it cannot perfectlie be red or kept in time cuming, as ane ſufficient evident to mak faith to poſterite, the tenour thairof, and the chance foirſaid beand provin be ſufficient witneſſis, or be confeſſioun of the partie, aucht and ſould be renewit and redintegrat be him, or his airis, quha gave and maid the ſamin, in the ſamin form, and of the ſamin dait as thay war of befoir, to be autentique, and mak faith in all time cuming. 27 *Junij*, 1561, Gilbert Gray *of* Shaives *contra Laird of* Eſſilmonth, 1 *t. c.* 1250.

C. IV. Of evidentis producit befoir the Lordis of ſeſſioun, and amittit and tint.

GIF ony evidentis or writtis be producit befoir the Lordis of ſeſſioun in judgment, be onie partie, or be his procuratour in his name; and it happinis the ſaidis evidentis or writtis to be tint or put away, ſwa that efter diligent ſearching the ſamin cannot be found nor recoverit; gif the productioun thairof be perfectlie knawin to the ſaidis Lordis, or maiſt part of thame, and ſpeciallie gif the contentis and ſubſtanciall punctis thairof be in freſh remembrance, thay aucht to cauſe the Clerk of regiſter, or his deputis, to give ane copie of the ſaidis evidentis and writtis, under his ſubſcriptioun manual, to the ſaid partie or procuratour, contenand the form of all the neceſſar and ſubſtantious clauſis that wer contenit in the principal, ſwa neir in all thingis as thair memorie can ſerve and apprehend; quhilk copie, gevin in maner foirſaid, ſall be als valid and autentique in judgment, and outwith, as the verie principal, gif it had not bene tint. 12 *Jan.* 1496, *The Erle of* Buchane *contra* Duncan Forbes, 1 *t. c.* 131.

C. V. Anent the delivering of evidentis.

THE haver of ane manis evidentis may be chargit to deliver the ſamin within ſax dayis to the awner, or ellis to compeir befoir the Lordis, and ſchaw ane reſſonabill caus quhy he ſould not do the ſamin: And gif he failzeis to compeir, letteris may be direct *ſimplicter*. 24 *Julij*, 1532, 1 *t. c.* 534.

C. VI. The fundatioun and principal punctis of a chartour.

ANE chartour is ane writ contenand record of ane immovabill thing, gevin and grantit perpetuallie to ony perſoun, *De except. c.* 18. *De oblig. c.* 13. Thair ar ſindrie principal partis in ane chartour: 1. The name and ſirname of the gevar. 2. The name and ſirname of the donatour. 3. The cauſe of the gift or diſpoſitioun. 4. The name, quantitie and ſituatioun of the thing that is diſponit. 5. The form and maner of halding. 6. The ſervice or dewtie for the quhilk the diſpoſitioun was maid. 7. The time and date of the diſpoſitioun. 8. Divers and lauchfull witneſſis. 9. The Seill of the maker. 10. His ſubſcriptioun. *De except. c.* 18. *De cart. c.* 15.

Anent covenant and pactioun.

C. I. The definitioun of ane pactioun.

PACTIOUN, or covenant, is ane conſent of ane or ma perſounis, concerning the geving or doing of ony thing. For ane pactioun is not ane conſent tuiching the veritie or falſet of ony thing, be-

becauſe, albeit twa or ma perſounis baith conſent to this propoſitioun, quhilk in the ſelf is falſe, *viz. That godlie lawis, and adminiſtratioun of juſtice, ar vane dreamis of idle men*; or in this propoſitioun, quhilk in the ſelf is trew, *viz. That godlie lawis ar the inventioun of gude and wiſe men, and ar the ſoul of the citie, and commoun wealth*; the ſamin conſent on na wayis may be callit ane pactioun, for it producis na obligatioun, nor obliſſis not the ane perſoun to the uther. Attour, in ſwa far as pactioun is callit ane conſent of twa or ma perſounis, the ſamin is underſtuid fra ane hecht or ſimple promiſe, utherwayis callit *pollicitatio*, quhilk is ane promiſe of ane man allanerlie to ane uther. *Lib.* 1. *c.* 32.

C. II. The diviſioun of pactiounis.

THAIR ar twa kindis of pactiounis; for ſum ar real, and utheris perſonal. Real pactioun is quhen ony perſoun generallie, without mentioun of ony man, makis covenant that he ſall not clame nor ask ſic a thing; in the quhilk cais, nather he to quhome the pactioun is maid, nather his airis nor ſucceſſouris, may be callit or convenit for that thing for the quhilk the pactioun is maid. Perſonal pactioun is quhen ony man makis covenant that he ſall not ask ſic thing fra ſic a perſoun: And gif it be uncertane quhidder ony pactioun is real or perſonal, the ſamin may be knawin als weill be the thocht and mind of the makeris of the covenant, as be the expres wordis of the ſamin; for ſindrie times the name of ane perſoun is ſpeciallie inſert and contenit in the pactioun, not to the effect that the ſamin ſall be thairfoir ane perſonal pactioun, bot to the end that it may be knawin with quhom ſic a pactioun is maid. *Lib.* 1. *c.* 33.

Real and perſonal pactiounis.

C. III. The ſecund diviſioun of pactiounis.

ITEM, Thair ar twa kindis of pactiounis; for ſum ar proffitabill, and ſum unproffitabill; and it is to wit, that all pactiounis ar proffitabill quhilk ar not unproffitabill: And 1. Sum pactiounis ar unproffitabill in reſpect of the perſounis with quhome thay ar maid, ſic as covenantis maid with him that is continuallie furious, quha thairfoir may not conſent to the making of ony pactioun; bot it is utherwayis to be underſtuid of him quha is ſumtimes mad and furious, and ſumtimes hes richt wit and judgment, ſic as lunatique perſounis, quha, in time of thair furie and diſeaſe, may not mak ony pactioun; albeit in the time of thair health thay may leaſumlie do or mak the ſamin. *Item*, 2. All pactiounis ar unproffitabill that ar maid with ane pupil, or minor of les age, bindand and obliſſand him to ony perſoun, without the authoritie of his tutor; for ane minor may not obliſs himſelf to ane uther without his tutor's authoritie; bot he may tak ony uther perſoun bund and obliſt to him without his tutor's conſent. *Item*, 3. Sum pactiounis ar unproffitabill, be reſſoun thay ar maid betwix ane husband and his wife; for the wife may mak na pactioun, nather obliſs hir to ony perſoun, without licence and authoritie of hir husband. *Item*, 4. Sum pactiounis ar unproffitabill, in reſpect of the maker, or thing for the quhilk thay ar maid, as gif thay be maid tuiching ony thing that is not *in rerum natura*. *Item*, 5. Pactiounis maid of thingis defendit and forbiddin, ar unproffitabill, and of na effect, albeit thay be confirmit with the aith of the maker thairof. *Item*, 6. Pactiounis ar unproffitabill, quhilkis ar maid to the harm and perill of the ſaul of him that makis the ſamin; and thairfoir ſould not be kept. *Item*, 7. All

Unproffitabill pactiounis.

pactiounis that ar maid of thingis filthie, unhoneſt or impoſſibill, be the law, or be way of deid, is of nane availl, and producis nà band or obligatioun. *Item*, 8. Pactiounis ar unproffitabill, quhilkis ar maid of uſerie or ocker. Ane aith ſould be kept in all maner of pactiounis and covenantis that is maid leaſumlie of ſic thingis that concernis not the hurt or harm of the ſaul, and in nane uther. *Lib.* 1. *c.* 35.

C. IV. In all pactiounis ſum titill or cauſe ſould be expremit.

ALL pactiounis, contractis, aſſignatiounis or diſpoſitiounis, maid be ony perſoun, contenand na titill, *neque oneroſum, neque lucrativum*, is ſimulat, feinzeit, and null in the ſelf, or, at the leaſt, ſould be decernit null and of nane avail, force nor effect. *Pen. Novemb.* 1533, 1 *t. c.* 948.

C. V. Of pactioun efter the contract derogative thairto.

GIF ony pactioun, contract, obligatioun or aſſedatioun contene ane ſpecial reſtrictioun or clauſe, and ather of the parties contracteris, at the time of the making of the ſamin, or incontinent thairefter, mak ony pactioun or appointment contrare or derogative to the former reſtrictioun or clauſe; the ſamin is ſufficient of the law, and aucht and ſould be obeyit and fulfillit: And gif contraverſie ariſe tuiching the ſaid poſteriour pactioun, the ſamin aucht and ſould be provin be writ inſtantlie, and na utherwayis. *Pen. Novemb.* 1533, 1 *t. c.* 947.

C. VI. The effect of pactiounis.

PACTIOUNIS or covenantis lauchfullie maid, not onlie bindis and obliſſis the makeris thairof, bot alſua the ſtrenth of the ſamin is extendit to uther perſounis; for pactioun maid be the predeceſſour obliſſis his ſucceſſour; and pactioun maid be the father bindis and obliſſis the ſone. *Lib.* 1. *c.* 36.

Of borrowing and lending.

C. I. The maner of borrowing and lending.

THE mute and actioun concerning lawic men pertenis to the Kingis crown, and ſould be thair decidit and endit: And thairfoir, quhen ony man clamis in the Kingis court ony debt auchtand to him, it is decydit and judgit, gif baith the parties be abſent, or gif ony of thame be contumax, or makis default befoir the entres of the pley: And gif baith the parties beis preſent in the court, the perſewar may ask and clame his debt, for divers and ſindrie cauſis; for the ſamin may be auchtand be virtue of borrowing and lending, or of buying and ſelling, or of *commodatum* or *depoſitum*, hyring, or for ſum uther juſt cauſe of debt, *Lib.* 3. *c.* 1. Borrowing and lending is quhen a man lendis to ane uther ony movabill gudis or geir, quhilk conſiſtis in nombre, weycht or meaſour: And gif the lender reſſavis mair again than he lent, he committis ocker. Borrowing and lending may be ſumtimes be ſecuritie of pledge and ſovertie, ſumtimes under ſikkernes of ane wad, ſumtimes under faithful promiſe and obligatioun maid be word, ſumtimes be writ, ſumtimes be divers witneſſis, and ſumtimes under ſikkernes of ſindrie of the maneris abone ſpecifyit. *Ibid.*

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GIF he quha hes lent ony money to ane uther, thairefter makis with the borrower thairof *pactum de non petendo*, promittand that he ſall not ask nor crave the ſamin himſelf, nor be utheris in his name in ony time cuming; he may not thairefter call and perſew for reſtitutioun of the ſamin. 1 *Decemb.* 1562, Catherine Gordoun *contra* Alexander Gordoun *of* Abergeldie, 1 *t. c.* 800.

C. II. *Pactum de non repetendo*, ſtoppis repetitioun of that quhilk was lent.

Anent pledgis and cautioneris.

C. I. Of divers kindis of pledgis.

IT is to wit, gif ony man is borgh and pledge for ane uther, quha is attachit in ony actioun of debt or crime, ather he is pledge for him that he ſall ſtill ſtand to the richt of his partie on him complenand, and then the pledge to remane bund and obliſt as pledge for all and haill that quhilk is clamit fra the debtour, for quhome he is pledge, unto the end of the pley: And gif the debtour be not reſponſal, the pledge ſall ſatisfie the King and the court of all unlawis, and the partie of his recoverie. Or he is pledge for him as haill furthcumand borgh, and then he is haldin allanerlie to enter his perſoun, gif he be haill and feir, to the ſute of the perſewar befoir the Judge, within the court, at lauchful day and place aſſignit thairto: And quhen he hes enterit him in plane court and judgment, he ſould be diſchargit thairanent as law will, *Quon. attach. c.* 11. *Mod. ten. cur. c.* 20. *Lib.* 3. *c.* 2. Becauſe gif ony man be ſovertie or cautiouner for ane uther, *de judicio ſiſti*, he ſould not be compellit as ſovertie to mak payment of the debt auchtand be the principal debtour, nor zit may be put in ward thairfoir, except the principal partie, for quhome he is ſovertie, be abſent: And thairfoir, gif he enteris the principal partie to the Judge, befoir or efter the geving of the decreit, he is fré, and relevit of his ſovertie. *Ult. Julij*, 1554, Alexander Kay *and* Johne Methven *contra* Johne Methven, 1 *t. c.* 1178.

C. II. Gif the principal debtour failzeis to mak payment to the creditour, his cautioner is haldin to do the ſamin.

ANE creditour perſewand ane debtour befoir ane Judge, the ſaid debtour findis ſovertie that he ſall compeir and anſwer befoir the ſamin Judge, as law will, and ſatisfie the creditour, conform to his obligatioun maid to the ſaid creditour thairupon: Gif the ſaid debtour be fugitive, and compeir not at the day appointit, to anſwer and ſatisfie the creditour, as ſaid is, the ſaid ſoverties and cautioneris ar haldin and obliſt to content and pay the ſowmis and debtis aucht to the creditour be reſſoun of thair obligatioun of ſovertie; and the ſamin beand payit be thame, thay aucht and ſould have regreſs aganis the ſaid principal debtour, his landis and gudis, for thair releif, and recovering of the ſowmis by thame payit in his name, as ſaid is. 6 *Octob.* 1479, Thomas Fockart *contra M.* Nicol Touris and utheris, 1 *t. c.* 10.

C. III. In quhat cais a man may pledge for himſelf.

ALL fré men may be pledge and borgh for thameſelfis, als weill within court as without, for all amerciamentis, and uther ſmall debtis, ſa lang as thay ar reſponſal, or hes ocht within the juriſdictioun of the Judge, and may be diſtreinzeit thairfoir. *Mod. ten. cur. c.* 23. *Quon. attach. c.* 21.

ANE

C. IV. All ſtrangeris beand perſewit ſould find cautioun.

ANE ſtranger being perſewit within this realme befoir ony Judge, for ony civil cauſe or actioun, as for debt auchtand, ſould find cautioun *de judicio ſiſti, et judicatum ſolvi.* 27 *Mart.* 1527, Catherine Curle *contra* Jonet Watſone, 1 *t. c.* 288.

C. V. Quhen the pledge may be perſewit be the creditour.

QUHEN ony debtour findis or gevis ane pledge or cautioun for ony debt auchtand be him, the pledge may not be callit or perſewit thairfoir, except the principal debtour have not of his awin to pay the ſamin, or is not reſponſal thairfoir, or zit will not mak payment of the ſamin, *Lib.* 3. *c.* 1. *Leg. Foreſt. c.* 73. For the pledge ſould not be diſtreinzeit, nor perſewit in judgment, for the debt for the quhilk he is pledge, gif he alledge and preve that the principal debtour hes ſufficient gudis and geir of his awin to pay the ſaid debt, and may be diſtreinzeit be his creditour, in gudis within the ſamin juriſdictioun quhair the creditour makis reſidence, or within the juriſdictioun of the Judge, befoir quhom the debt was lauchfullie recoverit in judgment, *Quon. attach. c.* 11. *Mod. ten, cur. c.* 20. *De oblig. c.* 14. *Item,* Quhen the principal debtour hes not ſufficient gudis of his awin to pay his debt, the creditour hes recourſe and actioun aganis the pledge and ſovertie, *De judic. c.* 14. And quhen the pledge comperis in judgment, ather he confeſſis and grantis that he is pledge for the debt, or denyis the ſamin. Gif he grantis the borrow-gang, he is haldin to preive that he is quyte and fré thairanent, be reſſoun of payment thairof maid be him, or utherwayis; or then to mak payment thairof to the creditour at competent dayis and termis contenit in his obligatioun, or aſſignit to him be the Judge to that effect: And gif the pledge denyis the burrow-gang, or gif thair be divers and ſindrie pledgis, and thay all deny, or gif ſum of thame grantis, and ſum denyis, in this cais the creditour may perſew thame that denyis, and may preive the burrow-gang be his aith and be witneſſis, except that the pledge perſewit mak faith in the contrare, and thairby acquite himſelf, and releive the creditour perſewar fra geving of his aith in this cauſe, *Lib.* 3. *c.* 1. *Item,* Gif divers and ſindrie pledgis be obliſt for ane debt, ilk ane for ane certane part thairof, and ony of thame confeſs the borrow-gang, and zit alledge that he is not pledge for ſa great ane ſowme, or part of the debt that is aſkit fra him; the creditour hes gude richt and actioun to perſew for ſa mekle as he may ſufficientlie preive him to have becum pledge and ſovertie for to him, *Lib.* 3. *c.* 1.

C. VI. It is leaſum to the creditour to perſew the debtor or his ſovertie.

THE creditour, intendand and perſewand ſummoundis aganis the principal debtour, and his ſovertie, may, efter his pleaſour, at the bar, paſs fra the perſute of ony ane of thame, and perſew the uther for the haill debt, *viz.* he may leive and pas fra the principal debtour, and perſew the ſovertie allanerlie, 22 *Mart.* 1532. And the ſovertie being decernit to mak payment, hes gude actioun aganis the principal debtour, for his releif, and reſtitutioun of that quhilk he payit. 25 *Junij,* 1535, 1 *t. c.* 923.

C. VII. The debt being payit, the ſovertie is fré.

THE principal debtour makand payment, his cautioner is releivit, and may not be perſewit for the ſamin. 4 *April.* 1555, Frenchmen *contra* Pat. Leirmont *of* Dairſey, *and his collegues,* 1 *t. c.* 1190.

ITEM,

C. VIII. Of compledges.

ITEM, Gif ſum of the pledgis be obliſt as ſovertie for all and haill the debt and cauſe, and ſum utheris for ane part thairof, he that is obliſt, for the haill, beand perſewit thairfoir, hes actioun and recourſe aganis the reſt of his fellow-pledgis, for his releif, *viz.* ilk ane of thame for his awin part, *Lib.* 3. *c.* 1. *Item*, He that is obliſt as pledge *in ſolidum*, beand perſewit be the creditour, ſould have allowance and defalcatioun of all and ſindrie ſowmis contenit in his burrow-gang, quhilk he may ſufficientlie preive be the creditouris confeſſioun or utherwayis, to have bene payit to him be the principal debtour, or ony of his pledgis, *De judic. c.* 142. *Item*, Gif divers and ſindrie pledgis be obliſt, be writ or without writ, beſoir lauchfull witneſſis, for ony actioun or debt, ilk ane of thame is bund *in ſolidum* thairfoir, albeit na ſpecial mentioun be maid thairanent in the writ or conventioun; and thairfoir ilk ane may be callit and perſewit for the haill, except ſpecial proviſioun be maid in the contrare, quhairby ilk ane of thame is obliſt for ane certane quantitie; for, in this cais ilk ane of thame is obliſt, and may be callit for his awin part allanerlie; And the termis of payment beand bypaſt, gif the creditour poſtponis and delayis, in his awin default, the perſute of the debt auchtand to him, and nather callis nor perſewis the principal debtour, nor ony of his pledgis thairfoir, bot ſufferis thame to paſs quyte thairanent, for ane certane ſpace, lang or ſhort, unto the time that the principal debtour, or ony of his pledgis, happin to becum not reſponſal; and thairefter the creditour callis and perſewis ane or ma of the ſaidis pledgis, for payment of all and haill the ſaid debt, becauſe thay war obliſt *in ſolidum*, or without mentioun of ony quantitie; the ſaidis pledgis beand callit and perſewit, as ſaid is, ar not haldin to anſwer bot ilk ane for thair awin part; becauſe, gif the creditour had perſewit his debt, and clamit the ſamin in dew time fra all and ſindrie the ſaidis pledgis, at ſic times as thay war reſponſal thairfoir, he micht have recoverit his debt fra thame, and thairfoir he ſould impute the fault to himſelf that he delayit ſa lang the asking thairof, and callit not nor perſewit thairfoir. *De jud. c.* 142.

C. IX. A compledge may not be compellit to anſwer without his fellowis.

GIF twa or ma perſounis becumis pledgis in ony actioun or cauſe, and ar ſummonit to ane certane day to anſwer anent thair burrow-gang; and it happin that ony of thame compeir not at that day, the reſt of the pledgis preſent may not be compellit at that day to anſwer thairanent, without him or thame that ar abſent, except thay raſhlie or wilfullie mak anſwer thairto. *Lib.* 4. *c.* 22.

C. X. The cautioner may perſew the principal debtour for his releif.

Decrete gevin aganis ane, as ſovertie for ony debtour, he hes gude richt and actioun aganis the principal debtour for his releif, albeit he hes not payit, as ſovertie, the ſowme contenit in the decrete gevin aganis him, 17 *Julij*, 1540, 1 *t. c.* 1043. Attour, the borgh or pledge may, for his releif, call and perſew the principal debtour, to fré and releive him of his burrow-gang, for divers and ſindrie cauſis: 1. If he hes bene and remanit ane lang time bund and obliſt as pledge for him, and hes gottin na releif thairof. 2. Gif the principal debtour beginnis to becum puir, or not reſponſal. 3. Gif the pledge be condampnit and decernit in judgment as pledge to mak payment for the principal debtour, *De except. c.* 20. *Item*, Be

the law of this realme, ane pledge that confeſſis, or is ſufficientlie provin to be pledge for the principal debtour, may be callit and perſewit in all thingis concerning his borrow-gang, even as the principal debtour, the day of payment being bypaſt; and the pledgis, efter payment maid be thame, have juſt actioun and richt to recover that quhilk thay have payit for the principal debtour, gif he in ony time cuming have quhairof he may pay the ſamin, *Lib.* 3. *c.* 1. And the ſaidis pledgis, gif thay pleis, may have recourſe to the rentis and landis pertening to the principal debtour, untill thay be ſatisfyit and compleitlie payit of the debt, quhilk thay payit as pledgis for him, except the principal debtour ſufficientlie preive that he is na wayis obliſt to releive thame thairanent, *Leg. Foreſt. c.* 73. *Item*, Gif ony man be pledge for ane uther, that he ſall ſtand to the richt of all parties complenand on him, and thairthrow fallis in the Kingis mercie; gif he pay ony thing thairfoir, he hes gude actioun, titill and richt to recover the ſamin fra him for quhom he was pledge, *Lib.* 3. *c.* 1. *De jud. c.* 14. *Item*, Gif ony man is borgh for ane uther, to ſtand to richt and anſwer as law will, in ony actioun or mute pertenand to the Kingis mercie, as of the breking of the Kingis peice; gif he enter not him in judgment for quhom he is borgh, he fallis in the Kingis mercie, quhaſumever he be; and gif he enter him, he is deliverit of his borrow-gang. *Lib.* 3. *c.* 1. *in lib. Methven & Purves.*

Anent thingis laid in wad.

C. I. Of divers kindis of waddis.

GUDIS and landis ar ſumtimes lent and borrowit under ſickernes of ane wad: And it is to wit, that ſum thingis ar laid in wad to ane certane day and term, and ſum thingis ar wadſet without ony certane day or term. *Item*, Sumtimes movabill gudis and geir ar laid in wad, as cattell; and ſumtimes immovabill gudis and geir ar wadſet, as landis, tenementis, or rentis conſiſtand in money, or uther thingis. *Item*, Sum thingis ar laid in deid, or drownit wad, and ſum utherwayis. *Lib.* 3. *c.* 3. *De jud. c.* 15.

C. II. The wad ſould be deliverit to the creditour.

ITEM, Efter that it is accordit and agreit betwix the debtour and the creditour, anent the laying of ony thing in wadſet, quhat kind of thing that ever it be, movabill or immovabill, the debtour incontinent, efter he hes reſſavit the thing borrowit be him, ſould put the creditour in poſſeſſioun or ſaſine of the wad. *Lib.* 3. *c.* 3.

C. III. Of thingis wadſet to a certane day.

THINGIS may be laid in wad to ane certane day and term, twa maner of wayis: Firſt, ſpecial pactioun and proviſioun may be maid betwix the creditour quha reſſavis the wad, and the debtour quha gevis the ſamin, that gif the debtour pay not his debt at the ſaid day, the wad ſall pertene in all time cuming to the creditour, to be diſponit be him as his awin proper gudis and geir; the quhilk conventioun is leaſum of the law, and ſould be kept and obſervit, *Lib.* 3. *c.* 4. Secundlie, Gudis or landis may be wadſet to ane certane term and day, without ony ſic ſpeciall appointment or proviſioun as is abone reherſit; and then, becauſe the debt may not be askit befoir the term

term of payment, the term and day being bypaſt, gif the debtour delay to mak payment of the debt to the creditour, he may be callit and perſewit at the creditouris inſtance, to compeir and anſwer in judgment thairanent; for it is neceſſare that he be at ſum time preſent in the court, befoir the wad be decernit to pertene to the creditour, becauſe he perhaps may ſhew ſome reſſonabill cauſe quhy the ſamin ſould not be done: And gif the debtour comperis in judgment, ather he grantis that he laid the ſamin thing in wad for the ſaid debt that is aſkit fra him; or he denies the ſamin. Gif he grantis, then, becauſe he thairby confeſſis the debt, he may be chargit at the creditouris deſire to ane certane reſſonabill day, with certificatioun and he failzie to do the ſamin, it ſall be leaſum to the creditour thairefter to diſpone upon the wad at his pleaſour, as upon his proper gudis and geir. Gif he denyis the wad, and alledgis the ſaid thing quhilk is pretendit to be wadſet, to be his awin proper gudis or geir, and to have fallin fra his poſſeſſioun, and cum in the poſſeſſioun of ane uther be reſſoun of lending, or becauſe it was gevin him in keiping, or for ſum uther reſſonabill cauſe; in this cais the creditour is haldin to preive that he lent ſa mekle as is contenit in his clame, and for the mair ſecuritie thairof reſſavit the ſaid thing in wad: And gif the debtour, beand perſewit in judgment, denyis *ſimpliciter*, baith the wad and the debt, and grantis the ſaid thing on na wayis to pertene to him, it ſall be leaſum to the creditour to ſell or utherwayis diſpone upon the ſamin at his pleaſour. *Lib.* 3. *c.* 4. *De judic. c.* 143.

C. IV. Of thingis laid in wad without a certane day.

GIF ony thing be wadſet without a certane day or term, the creditour may, at ony time he pleaſis, aſk and clame his debt for the quhilk the wad was gevin to him; and he beand compleitlie paid be the debtour of all and haill the debt auchtand to him, is haldin to reſtoir and re-deliver incontinent the wad to the debtour, without worſing or deterioratioun: And gif the wad, beand in the poſſeſſioun and keiping of the creditour, happinis to be tint or made worſe, the creditour nevertheles remanis bund or obliſt thairfoir, becauſe he is preciſelie obliſt to reſtoir the wad itſelf, or mak ſatisfactioun thairfoir, or to leave and tyne his debt. *Lib.* 3. *c.* 5.

C. V. Of movabill gudis laid in wad.

QUHEN ony movabill gudis or geir is laid in wad to a certane term, and put in the creditouris poſſeſſioun, the creditour is haldin to keip the ſamin ſaiflie and ſuirlie, and may on na wayis uſe nor handle the ſamin, quhairby it may be maid worſe then it was the time that it was gevin him in wad; for gif it be maid worſe in the creditouris keiping and poſſeſſioun, in his default, and within the time to the quhilk it was laid in wad, als mekle of the principal debt auchtand to him ſall be defalkit and rebaitit as extendis to the valour of the ſkaith, and worſing of the wad maid as ſaid is. Attour, gif the thing that is wadſet requiris neceſſar expenſis and coſtage, as gif the ſamin be horſe, cattell, or ony uther beiſtis, quhilkis neidis to be fed and nuriſhit; the conventioun maid heiranent betwix the debtour and the creditour ſould be kept and obſervit. *Lib.* 3. *c.* 4. *De jud. c.* 143.

C. VI. Suppois the wad be tint

GIF ony man lendis to ane uther ane ſowme of money, and reſ-

ſavis

or ſtollen, the creditour may ſeik agane the money lent be him.

ſavis a wad thairfoir, to be kept be him, until his money be reſtorit to him, and it happin the ſamin wad to be ſtollin be theivis, robberis or brigantis, or to be tint and loſt, be ony chance, force or violence, without ony fault or negligence of the keipar, to the quhik he could not reſiſt, he ſould not be compellit or haldin to mak reſtitutioun thairof; and zit nevertheleſs he hes gude actioun for repetitioun of his money, for the quhilk the ſamin pledge was gevin. 6 *April.* 1566, Johne Foulis *contra* Timothy Cognerlie, 1 *t. c.* 881.

C. VII. The debtor may not repete the wad, bot gif he offer the money.

GIF ony man borrowis fra ane uther ane ſowme of money, and gevis him a wad thairfoir, he hes na actioun for repetitioun of his wad, except he reſtoir, or reallie offer the money borrowit be him. 1 *Martij*, 1569, Elizabeth Douglas *contra* James Menzeis.

C. VIII. Of immovabill gudis laid in wad.

QUHEN ony immovabill gudis or landis ar wadſet to ane certane term, and put in the creditouris poſſeſſioun and ſaſine, gif it is agreit and appointit betwix the debtour and the creditour that the proffeitis and rentis of the landis ſall be allowit in the principal debt, and ſall acquyte the ſamin, the ſaid actioun is leaſum of the law, and ſould be kept and obſervit: Bot gif it be appointit betwix thame, that the rentis of the landis, or ony uther thing laid in wad, ſall not acquyte the principal debt, the ſaid conventioun and appointment is unjuſt and unhoneſt, and is callit *died wad.* And nottheles the ſamin is not expreſlie defendit nor forbiddin be our ſoverane Lordis lawis and ordinances, always it is repute and haldin as ane kind of ocker; and the gudis and geir pertening to all perſounis that uſis ſic wadſettis, unto the time of thair deceis, may be diſponit upon, efter thair deceis, be our ſoverane Lord, as gudis and geir pertening to ockereris. *Lib.* 3. *c.* 7.

C. IX. Of deid wad.

MORTAGE or deid wad is that quhairof the fruitis and rentis takin up in the mean time be the creditour, quytis not nor payis not the ſowme in all nor in part, for the quhilk the wad wes gevin be the debtour. *Lib.* 3. *c.* 4. *De judic. c.* 15.

Anent donatiounis and fré giftis.

C. I. How donatiounis *inter vivos* may be revokit.

QUHEN ony fré gift or donatioun is gevin or maid, the ſamin may not be retrectit nor revokit *regulariter*, albeit the ſamin may be revokit for ſum cauſis accidental, and cum be chance, be reſſoun of unthankfulnes of the donatour, *viz.* 1. Gif the donatour hes put violent handis in the gevaris perſoun. 2. Gif he hes done him ane greit and heynous injurie. 3. Gif he hes attemptit to do him ony greit ſkaith in his landis or gudis. 4. Gif he hes ſocht his life, or preſſit to put him in perill thairof. 5. Gif he hes not obeyit and fulfillit the proviſiounis and conditiounis ſpecifyit in the gift, *Rob.* III. *c.* 19. *Item*, A donatioun maid to the kirk may be revokit, 1. Be reſſoun of the maner thairof, or conditiounis contenit thairintill. 2. For the filthines or unhoneſtie of the ſamin. 3. Gif the ſamin be maid for ony licht or unreſſonabill cauſe, as gif the father not agreing with the ſone, diſheriſhis him, and gevis his

landis

landis to ane uther. 4. For fraud committit be the donatour, as gif ony man, be guyle and deceipt, inducis ane uther to give him his gudis and geir. 5. For inhabilitie of the gevar, as gif ony eccleſiaſtical gudis and geir be gevin or left in legacie be him that had not powar to do the ſamin. *Rob.* III. *c.* 13.

C. II. How donatiounis maid *cauſa mortis* expyris.

GIF ony perſoun havand death befoir his eye, and in reſpect and for the feir of the ſamin, leivis ony ſowme of money, or ony uther thing quhatſumever, to be imployit as almons, or in uther godlie uſe, in cais of his deceis, and he convaleſce of his ſeiknes, and eſcape the peril quhilk he fearit of befoir, he hes juſt actioun and titill to call for reſtorance and repetitioun of that quhilk wes left and diſponit be him in maner foirſaid; becauſe the diſpoſitioun thairof was maid in reſpect and contemplatioun of his deceis, and na utherwayis. 10 *Martij*, 1547, Elizabeth Barrie *contra* Williame Ker, 1 *t. c.* 664.

Anent a lenne.

C. I. Quhat is ane lenne, and of the reſtitutioun thairof.

GUDIS and geir movabill may be auchtand and clamit be ony man, as lent be him to ane uther, *viz*, I lend ony of my gudis and geir to zou, not reſſavand ony gude deid or gratitude thairfoir, to be uſit for ane certane time be zou, in zour ſervice; the time beand bypaſt, and the thing that is lent beand uſit in ſic ſervice and maner for the quhilk it is lent, ze ar bund and obliſt be the law to reſtoir to me the ſelf-ſamin gudis and geir, als gude as thay war the time that thay war lent to zou: And gif the ſamin, beand in zour poſſeſſioun and keiping, happinis to periſh, or be tint, or in ony wayis maid worſe, ze ar alwayis obliſt to reſtoir to me the juſt and reſſonabill price and valour, as I may preive the ſamin be ſufficient witneſſis. *Lib.* 3. *c.* 7.

C. II. Quhen a thing lent may be askit agane.

ITEM, Gif ony man lend ony of his gudis or geir to ane uther, to a certane place and uſe, and he to quhom the ſamin is lent uſe the ſaid gudis and geir utherwayis than thay war lent for, or to ony uther place than to the quhilk thay war lent, he aucht and ſould mak ane amendis and ſatisfactioun thairfoir, at the ſicht of honeſt men, and on na wayis may be callit for thift thairof; becauſe the firſt beginning of his poſſeſſioun of the ſaidis gudis and geir procedit fra the richteous awner of the ſamin. *Item*, Gif ony man hes lent gudis and geir to ane certane time or limitit place, he may not ask agane the ſamin befoir the time be bypaſt, nor zit untill he to quhom the ſamin is lent have done thairwith the uſe quhairunto the ſaidis gudis wer lent and deliverit. *Lib.* 3. *c.* 7.

C. III. Of horſe or cattell lent to ony man.

ITEM, Gif ony man be challengit for horſe, ox or kow, or ony uther beiſt or cattell, the quhilk he alledgis was lent to him be ane uther man; he that is challengit is haldin, within the ſpace of ane day and ane nicht, to reſtoir and deliver agane the ſaid beaſt or cattell to him quhom fra he borrowit the ſamin, gif he be preſent; and gif he be not preſent, he that is preſent ſall have a competent

day to call him for his warrand: And he beand callit for warrandice, ſall anſwer heiranent as for his awin gudis and geir. *Item*, Gif ony man of gude name and honeſt fame be challengit in the Kingis hoiſting, for ane horſe or ony uther beiſt, the quhilk he alledgis to be lent to him be ony uther man to ride and paſs to the hoſt, or for ony uther cauſe; he that is challengit ſall have ane delay and reſpyte to his hame-cuming within the ſchirefdome, in the quhilk that horſe or beiſt was lent to him; and within the fourt day and nicht efter his returning he ſall reſtoir the beiſt to him fra quhom the ſamin was borrowit; and he to quhom the reſtitutioun is maid ſall anſwer for that gudis as for his awin gudis. *Lib.* 1. *c.* 21. *Lib.* 4. *c.* 18.

De depoſito. Anent thingis gevin in keiping.

C. I. Of thingis gevin in keiping, ſtollen, or tint.

GIF ony evidentis, ſilver, gudis or geir be gevin and deliverit in keiping, *tanquam depoſitum*, to ony man, and he kept the ſamin as he kept his awin; and nevertheles it happinit the ſamin, with ſum of his awin gudis and geir, to be ſtollin or tint, beand laid up be him in keiping in ane place utherwayis ſufficient to that uſe; he on na wayis ſould be compellit to reſtoir and deliver the ſamin agane; *quia neque dolum, neque latam culpam commiſit, et depoſitarius ſolum tenetur de dolo et lata culpa.* *Pen. Julij*, 1540, Jonet Balfour *contra M.* David Pitcairne, 1 *t. c.* 513.

C. II. Of thingis gevin in keiping, reft and takin away *vi majori.*

GIF ony gudis or geir be gevin in keiping to ony perſoun to be furthcumand to the utilitie and proffeit of him that gevis thame, and it happin the ſamin to be reft and tane away *vi majori*, to the quhilk the keipar could not reſiſt, or without ony negligence or fault committit be him thairanent; he is not haldin to reſtoir and deliver the ſamin agane, except it be manifeſtlie provin be the awner thairof, that he, befoir the taking away of the ſamin, diſponit thairupon, or ony part thairof, to his proper uſe. 21 *Feb.* 1560, Captane Rollock *contra* Elizabeth Hamiltoun, 1 *t. c.* 781.

C. III. Of him quha reſſavis in keiping ane infeftment or aſſedatioun, and refuſis to deliver the ſamin agane.

GIF ony man reſſave in keiping ony infeftment of landis, or tak and aſſedatioun, to be deliverit to him to quhom the ſamin was maid and gevin, and beand requirit be him to deliver the ſamin, refuſis, poſtponis and delayis to mak deliverance to him thairof, he may be callit and convenit to refound, content and pay to him the haill proffeitis of girs, paſturage of horſe, mearis, ky, ſtirkis, butter, cheiſe, corn, cattell, or of ony uther gudis quhatſumevet quhilkis he micht have had of the ſaidis landis, ſteiding, mailling or poſſeſſioun, gif he had enterit thairto at the time contenit in the ſaid infeftment or aſſedatioun, and had labourit the ſamin with his awin gudis and geir, 16 *Julij*, 1532, Johne Spittell *contra* William Urquhart, 1 *t. c.* 690. *Item*, Movabill gudis and geir, ſic as claith, Jowellis, or money, gevin in keiping to ony perſoun, and it happin thairefter the awner thairof to be denuncit rebell, and put to the horn, and the gift of his eſcheit to be diſponit to the ſamin perſoun quha hes the ſaid gudis and geir in keiping, he on na wayis

hes

hes actioun efterwart for repetitioun of the famin, bot thay fall remane in all time cuming with him to quhom thay war deliverit in keiping, be reſſoun of the gift of eſcheit obtenit be him, as ſaid is. 3 *Junij*, 1557, Pat. Ramſay *contra the Laird of* Kynnier, 1 *t.* *c.* 753.

Anent thingis gevin and received in hyre, and of herezeld.

C. I. *De locato et conducto.*

GUDIS and geir may be auchtand and clamit be ony man, be reſſoun the famin ar lettin to hyre be him to ane uther; as gif ony man lettis a thing, or gudis pertenand to him, till ane certane term, for a certane agreit hyre promiſit to him thairfoir: In the quhilk cais he that lettis to hyre ſould give and deliver the thing or gudis, to be uſit as it aucht to be; and he that reſſavis the famin is obliſt to pay the hyre promiſit thairfoir, *Lib.* 3. *c.* 11. And it is to wit, that efter the term be paſt, to the quhilk the gudis or geir wer let to hyre, he that lettis the famin to hyre may of his awin authoritie intromet and tak poſſeſſioun agane of the famin gudis, geir or landis, *Lib.* 3. *c.* 11. *Item*, Gif landis or tenementis be lettin to ony man for hyre, ferm, or ony dewtie, and he to quhom the famin is lettin failzie in making payment of his dewtie be the ſpace of twa zeiris, in his awin default, not payand the famin as he aucht to do, he tynes his titill and richt of the landis, and may leaſumlie be removit and put thairfra be him quha did let the famin to hyre of his awin proper authoritie. *Lib.* 3. *c.* 11. *In* Methven *and* Purves.

C. II. Of him that hyris ane uther manis debtour.

GIF ony man conducis and hyris ane quha is auchtand debt to his nichtbour, and the nichtbour deſire that he hald him not in ſervice, and nevertheles he dois the contrare, and haldis and retenis him ſtill, he may be callit and perſewit for all and haill the debt: Bot gif he reſſavit ſervice of him befoir ony prohibitioun maid to him in the contrare, he ſall not be haldin to anſwer for the ſaid debt, bot allanerlie for the quantitie and rate of the ſervice, and for the hyre and fie auchtand to the ſervand thairfoir. *De jud. c.* 76.

C. III. Of removing of biggingis.

GIF ony man be pleidit and perſewit for ony land or tenement, quhairof he hes had poſſeſſioun for ane certane time, and thair be biggingis and houſis in the famin, biggit be him or be utheris; it is leaſum to him to deſtroy and remove the ſaidis houſis, and to cary and tranſport the timber thairof quhair he pleaſis, befoir decreit of removing be gevin aganis him thairanent. *Lib.* 4. *c.* 55.

C. IV. Of herezeldis.

GIF ony man ſittis and dwellis upon ane uther manis land, and haldis as ane huſbandman land of him, and it happin the huſbandman to deceis, his maiſter and Lord, of quhom the landis ar haldin, ſall have the beſt of his cattell, gif the land that was haldin be him that is deceiſt extendis to the aucht part of ane dawach of land, *viz.* to four oxen-gang, or to mair; for gif he that is deceiſt held

les

les land than ſaid is, na herezeld ſould be paid be reſſoun of his deceis. *Lib.* 4. *c.* 23. *Aſſiſ. R.* David. *c.* 14

C. V. Na herezeld may be askit bot fra him that hes four oxen-gang at the leiſt.

NA man, be the law of this realme, aucht and ſould pay herezeld, except the time of his deceis he was ane husbandman, and had, at the leiſt, four oxen-gang of land, and dwelt and deceiſt thairupon: And gif he had ony les, his ſone, wife, bairnis, nor ony uther perſoun, aucht nor ſould not pay ony herezeld. 16 *Junij*, 1547, Johne Sinclair *contra* Iſabell Wauchop, 1 *t. c.* 285.

C. VI. Herezeld may not be cravit untill the iſhe of the tak.

ANE tak and aſſedatioun of ony landis beand ſet and diſponit be ony man to his tenent, and his wife, and the langeſt levar of thame twa; gif it happin the ſaid tenent to deceis befoir the iſche of the tak, the ſettar and gevar of the ſamin may on na wayis perſew his ſaid tenentis wife or bairnis for ony herezeld, conſidering that the tak ſet be him in maner foirſaid is not as zit endit or expyrit. 17 *Octob.* 1470, Johne Logie *contra* Anna Houieſon, 1 *t. c.* 8.

C. VII. The tenent may not prejudge his Lord anent the ſervice aucht to him.

NA maill payer may prejudge and thirle his Lord, anent his fie and heritage, albeit he, within the time of his mailling and takkis, hes done ony thirle ſervice, or uther ſervice, to ony perſoun, for doing of the quhilk his Lord and maiſter was na wayis bund and obliſt; for the law ſayis that the deid of the tenent may not thirle his Lord, nor be prejudiciall to his richt. *Quon. attach, c.* 26. *Mod. ten. cur. c.* 26.

Of aſſedatioun.

C. I. Ane manis tak prejudgis not ane utheris heritabill richt.

GIF ony perſoun gevis to ane uther ane tak and aſſedatioun of ony landis, rentis, fiſching, or ony uther poſſeſſioun, quhairin another man is lauchfullie infeft and ſaiſit, or hes ony uther ſufficient titill or richt, and be vertue thairof is in poſſeſſioun of the ſamin befoir the day and dait of the ſaid aſſedatioun; he aucht and ſould bruik and joiſe the ſaidis landis, be vertue of his richt and poſſeſſioun: And the ſetter and maker of the ſaid aſſedatioun aucht and ſould warrand the ſamin to him to quhom he ſet the ſamin. 14 *Decemb.* 1511, Margaret Garden *contra* Johne Ogilvie *of* Innerquharitie, 1 *t. c.* 186.

C. II. The ſub-tenent is releivit be payment maid be the principal tenent.

PAYMENT of maillis and dewties maid be the principal tenent to the Lord of the ground, is ſufficient to releive and keip ſkaithles the ſub-tenant, at the handis of the ſaid Lord thairanent. 12 *Feb.* 1549, 1 *t. c.* 1112.

C. III. Tenentis of waiſtit landis ſould pay na dewtie.

LANDIS beand brint, waiſtit, and deſtroyit be oppin hoſtilitie, ſpait of water, or be uther force and violence, the tenentis and occupyaris thairof, ar not bund nor obliſt to mak payment of thair maillis, fermis and dewties, during the ſpace of the termis and zeiris of the deſtructioun. 10 *Mart.* 1553.

C. IV. Ane aſſedatioun ſould contene a certane dewtie.

ANE tak and aſſedatioun is not ſufficient, quhilk wantis the zeirlie dewtie quhilk ſould be payit thairfoir, or the date or witneſſis,

2 *Mart.*

2 *Mart.* 1561, *S.* James Balfour *Perſoun of* Fliſk, *contra the parochineris thairof*, 1 *t. c.* 1280. Becauſe all letteris of tak and aſſedatioun ſould contene ſum maill or dewtie to be payit zeirlie, utherwayis the ſamin is null and of nane avail, be way of exceptioun. 7 *Junij*, 1575, *The Laird of* Grange *contra the Lady thairof*, 2 *t. c.* 374.

C. V. A tak ſet to a man and woman, in contemplatioun of mariage to be completit.

TAK and aſſedatioun ſet to ane man, and a woman as his future ſpouſe, for all the dayis of ather of thair lifetimes, be vertue, and in contemplatioun of mariage, to be ſolemnizat betwix thame, and thairefter the man deceis befoir the completing of the ſaid mariage; the woman may crave na richt nor titill to the ſaid tak, nor alledge the ſamin to pertene to hir induring hir lifetime, albeit ſcho be in poſſeſſioun be vertue thairof befoir his deceis quha ſould have bene hir husband. *Pen. Jan.* 1562, Robeſon *contra* Jakſon, 1 *t. c.* 1289.

C. VI. Of a tak ſet to a man and his wife, and thair airis and aſſignayis.

TAK and aſſedatioun beand ſet to ony man and his wife, thair airis and aſſignayis, the wife, efter hir husbandis deceis, befoir the iſhe of the ſaid tak may mak and conſtitute ony perſoun, at hir pleaſour, ceſſionar and aſſignay, in and to the ſaid tak and aſſedatioun, for all the termis thairof to rin, and thairby may exclude hir husbandis airis (except thame quha ar gottin of his bodie) fra all richt and titill thairof. 28 *Julij*, 1561, John Quhyte *contra* John Brown, 1 *t. c.* 795.

C. VII. A tak ſet to a man and his wife, and langer levar of thame twa.

GIF ane tak and aſſedatioun be gevin and ſet to ane man and his wife, and the langeſt levar of thame twa, thair airis and aſſignayis; the wife, efter hir huſbandis deceis, may not mak ane aſſignay to the ſaid tak bot for hir lifetime allanerlie; and thairfoir gif ſcho happinis to deceis befoir the iſche of the ſaid tak, the reſt of the zeiris contenit thairin to rin aucht and ſould pertene to hir huſbandis airis, notwithſtanding ony aſſignatioun or diſpoſitioun maid be hir in the contrare. *Pen. Julij*, 1562, James Rig *contra the tenentis of N.* 2 *t. c.* 286.

C. VIII. The ſuperiour havand the ward or non-entres, is not obliſt to keip the tak ſet of befoir.

LANDIS fallin in the ſuperiouris handis be reſſoun of ward and non-entres, the ſuperiour is not bund nor obliſt to keip the takkis of the ſaidis landis ſet to tenentis of befoir the ſamin came in ward or non-entres: Bot notwithſtanding the ſamin be not run furth, he may warn the ſaidis tenentis, and cauſe thame be decernit befoir ane Judge to remove thairfra. 28 *Maij*, 1549, *Laird of* Dunnoon *contra* Robert Steuart, 2 *t. c.* 211.

C. IX. Of a certane alienatioun be way of tak, not vailzeabill without ſaſine.

ANE diſpoſitioun of ony landis or poſſeſſioun, maid for certane zeiris, and efter the zeiris be bypaſt and outrun, ay and quhill ane certane ſowme of money (confeſſit reſſavit be the maker thairof) be paid and deliverit togidder in ane ſowme agane to him quhom to the ſaid diſpoſitioun is maid, is na wayis to be underſtuid a tak and aſſedatioun, bot rather a kind and ſort of alienatioun, and thairfoir gevis na richt nor titill to him to quhom it is maid, without ſaſine be takin be him conform thairto. 10 *Decemb.* 1565, James Glen *contra* Ure, 2 *t. c.* 312.

C. X. The tenent ſould ſhew his tak to his maiſter.

ANE tak and aſſedatioun maid be ony manis predeceſſouris, or be himſelf in his minoritie, of his landis, rowmis, ſteidingis or poſſeſſiounis, ſwa that it be uncertane and unknawin to him quhat zeirlie maillis, fermis or dewteis ſould be paid to him thairfoir, or quhat zeiris is contenit in the ſamin, or how many zeiris and termis ar to rin; gif he to quhom the ſamin is ſet, beand requirit to ſhew the ſaid tak to the maker thairof, refuſis, poſtponis, or delayis to do the ſamin, he may be callit to exhibit, ſhew and produce the ſamin befoir ane Judge ordinar, and to heir and ſé ane autentique copie thairof, at the leaſt of ſa mekle of the ſamin as concernis the maker thairof, *viz.* the zeiris and termis, the dait, zeirlie dewtie, and uther neceſſare clauſis concerning him contenit thairin, to be extract it, drawin furth and deliverit to him, upon his reſſonabill expenſis. 23 *April.* 1566, Adame Gordoun *contra* Patrik Forbes *of* Croſs. 23 *April.* 1563, *Commendatar of* Quhitherne *contra D.* Margaret Home, 1 *t. c.* 894.

C. XI. Ane aſſedatioun contenand ane clauſe irritant.

TAK and aſſedatioun ſet to ony man, with ony of thir twa reſtrictiounis, *viz.* "Gif he to quhom the ſamin is ſet happinis not "to pay to the ſettar thairof his maillis and dewties at the termis "contenit thairin;" or "gif twa termis rin in the thrid unpaid;" in ather of thir caiſis, the ſamin aſſedatioun to be of nane avail, force nor effect. Gif he to quhom the ſamin is ſet, failzies to mak payment in maner foirſaid, or ſufferis twa termis to rin in the thrid unpaid, the ſame aſſedatioun may, be declaratour of ane Judge ordinar, be decernit to be null and of nane avail. 15 *Junij*, 1549, *Abbot of* Newbottle *contra* Johne Henryſone. *Pen. Feb.* 1559, *Prior of* Sanctandrois *contra* Margaret Flemyng, 1 *t. c.* 685.

C. XII. The firſt perſoun renunceand the tak, prejudgis the remanent.

ANE tak and aſſedatioun beand ſet or gevin to divers and ſindrie perſounis, ilk ane efter uther, of the quhilk ſum ar firſt, and utheris ar laſt; the firſt perſoun may renunce and diſcharge the ſamin; quhilk gif he dois, the ſecund or remanent perſounis may not clame efterwart ony richt or titill thairto. 20 *Novemb.* 1553, Annabell Hervie *contra* Alexander Jackſone, 1 *t. c.* 728.

C. XIII. The ſecund perſoun of ane aſſedatioun ſould have ane autentique copie thairof.

TAK and aſſedatioun maid to divers perſounis, and the ſecund perſoun deſire a copie thairof, and the firſt perſoun refuſand, he may be callit and convenit befoir ane Judge, to heir and ſé the ſamin tak copyit, upon the equal expenſis to be maid be him and the ſaid ſecund perſoun; and the principal tak to be deliverit to him as firſt perſoun, and the autentique copie thairof to that uther, as ſecund perſoun, 18 *Mart.* 1558, Chriſtiane Moncreif *contra* David Rattray, 1 *t. c.* 1242: Bot gif ane tak and aſſedatioun be ſet to twa perſounis, of the quhilk ane is *extranea* to the uther, havand na conjunctioun of blude nor utherwayis to him; the firſt perſoun contenit in the tak may not ſell, give or diſpone the ſamin without the ſecund perſounis conſent; becauſe the ſecund perſoun hes als gude richt to the tak at the time of the making thairof, as he hes thairto at the time of the deceis of the firſt perſoun, ſuppois the uſe and real poſſeſſioun of the landis contenit in the tak be ſuſpendit and abſtractit fra him during the firſt perſounis lifetime. 25 *April.* 1552,

1552, Matthew Hamiltoun *contra the Bischop of* Murray, 1 *t. c.* 242.

C. XIV. He that ressavis the girsum, may be compellit to deliver a tak, and pay the interest.

GIF ony man ressave fra his tenent, or ony uther persoun, girsum, or ony uther gude deid, for tak and assedatioun to be maid and gevin be him to the gevar of the girsum or gude deid, and he refusis, delayis and postponis to give the samin; he may be callit befoir ane Judge, and compellit to mak and deliver the samin, and als to content and pay all damnage, coist, skaith and interest sustenit be him to quhome the said tak wes promisit, throw wanting thairof, and throw non-deliverance of the samin in dew time. 26 *Julij*, 1541, 1 *t. c.* 1060.

C. XV. A ninetene zeir tak is a kind of alienatioun.

ANE tak and assedatioun set to ony man and his wife for ninetene zeiris, is repute and haldin ane maner and kind of conjunct infeftment, for all the termis and zeiris contenit thairin; and thairfoir it is not leasum to the man to sell, give or dispone the said tak, without his wife's consent. 16 *Junij*, 1551, Margaret Arnot *contra* Margaret Douglas, 2 *t. c.* 232.

C. XVI. Assedatioun of the Kingis casualitie sould pass the privie seill.

ALL takkis and assedatiounis of ony landis and emolumentis pertening to the King be ressoun of his casualitie, aucht and sould be subscryvit be his Hienes, and his Thesaurare for the time, and als sould pass the privie seill, utherwayis the samin is of nane avail, and may be retrectit and annullit. 13 *Novemb.* 1518, *The King contra* Thomas Reid, 1 *t. c.* 392.

C. XVII. Assedatioun of liferent is ane alienatioun.

GIF ony Bischop, or ecclesiastical persoun, settis in tak and assedatioun ony landis, fischingis, rentis, possessiounis, pertening to him as part and pertinent of his bischoprik or benefice, to ony persoun or persounis, for all the dayis of thair lifetimes, his successouris may call him or thame to quhom the said assedatioun was maid, to heir and sé the samin decernit null and of nane avail; becausse the samin aucht to be reducit in respect it was gevin for the lifetime of him or thame to quhom it is maid; quhilk kind of tak and assedatioun is alienatioun, and contrare the lawis of this realme, except the samin be dewlie confirmit. 14 *Decemb.* 1501, *Bischop of* Aberdene *contra* Johne Forbes, 1 *t. c.* 114. And siclike, ane tak and assedatioun of ony landis, housis, zairdis, orchardis, or ony uther rent or possessioun pertening to the kirk, set and gevin to ony man, for all the dayis of his lifetime, is null and of nane avail, and may be reducit, except the samin be sufficientlie confirmit; becausse siclike assedatiounis ar ane kind and form of alienatioun. 12 *Mart.* 1504, *The Abbot of* Crosraguell *contra* Johne Hamiltoun, 1 *t. c.* 216.

C. XVIII. Assedatioun of ane abbay place, cannot stand.

NA dwelling-place, housis nor utheris, na orchardis, zairdis, landis, nor thair pertinentis, may be set in tak and assedatioun, gif thay be within the wallis and zettis of ony abbay. 12 *Mart.* 1504, *Partes ut supra*, 1 *t. c.* 216.

C. XIX. Assedatioun contenand ane dewtie as-

ANE tak and assedatioun maid and set to ony man be ane Abbot, under his awin proper seill of office, with subscriptioun of the leist part

ſignit to the tenent for his fie.

part of the convent, and contenand na certane dewtie to be paid to the ſaid Abbot and convent, but all the ſamin dewtie gevin and aſſignit frelie to him to quhom the tak is ſet, for his fie, is of nane avail, and on na wayis bindis and obliſſis the ſucceſſour of the ſaid Abbot to the payment of ſic fie, without conſent of the maiſt part of the convent and commoun ſeill. 23 *Novemb.* 1486, *Abbot of* Aberbrothok *contra* Michaell Balfour *of* Burlie, 1 *t. c.* 31.

C. XX. It is leaſum to all Prelatis to ſet five zeir takkis, without conſent of the convent.

ALL Biſchoppis, and utheris Prelatis within this realme, may ſet five zeir takkis to thair tenentis, or utheris, of landis or poſſeſſiounis pertening to thame as part and patrimonie of thair benefices, without conſent of thair cheptour or convent: And thair ſucceſſouris aucht and ſould warrand and keip the ſamin, and may not ſeik ony girſum, proffeit, or commoditie thairfoir. 18 *Decemb.* 1541, William *Biſchop of* Aberdene *contra the executouris of umquhile* Gavine *Biſchop of* Aberdene, 1 *t. c.* 44.

C. XXI. All Prelatis may ſet ninetene zeir takkis, be conſent of the cheptour.

ALL Prelatis within this realme may ſet in tak and aſſedatioun thair teindis, or ony uther propertie, or part and patrimonie of thair prelacie, with conſent of thair cheptour, for all the dayis and ſpace of ninetene zeiris, and thair ſucceſſouris ar bund and obliſt to warrand the ſamin. 25 *Maij*, 1542, *The Proveſt of the Quenis college* contra *the Laird of* Balcleuch, 2 *t. c.* 100.

C. XXII. A Perſoun may ſet five zeir takkis.

A PERSOUN may ſet five zeiris takkis and aſſedatiounis of his benefice, and of the fruitis thairof, bot not of his manſe; and his ſucceſſour is bund and obliſt to warrand the ſamin, 26 *Mart.* 1558, *The Perſoun of* Muckarſie *contra* William Abernethie, 2 *t. c.* 273. And mairover, gif the ſetter happinis to deceis befoir the iſhe of the takkis, his ſucceſſour may not ſeik ony farther dewtie fra the takkiſmen than that quhilk is contenit in the tak, untill the zeiris and termis ſpecifyit thairin be fullie outrun and completit. *Ult. Mart.* 1558, Johne Sempill *of* Muckarſie *contra the parochineris thairof*, 1 *t. c.* 1216.

C. XXIII. A Vicar may not ſet but thré zeiris takkis.

BE the law and conſuetude of this realme, it is expreſlie forbiddin, that a Vicar ſet his benefice, or the proffeitis and dewteis thairof, in tak and aſſedatioun, without conſent of the ordinar and cheptour, at the leiſt of the ordinar and Patron, and for the ſpace of thré zeiris allanerlie: And gif ony ſic aſſedatioun be ſet, the ſamin is of nane avail, and may be reducit, at the inſtance of the ſucceſſour of him quha ſet the tak, bot not be himſelf; becauſe the ſamin beand ſet be him in his awin time, he ſall never be heard to cum in the contrare thairof, or to deſire the ſamin to be reducit and annullit. 1 *Mart.* 1566, Andro Simpſoun *contra* Laurence Cokburne, 1 *t. c.* 854.

C. XXIV. The parochineris ſould anſwer the ſucceſſour of the ſetter efter his deceis.

TAK and aſſedatioun of teindis, or ony uther dewteis, ſet to ony man as takiſman and fermorar, for five, or ma, or leſs zeiris, and the ſamin zeiris beand bypaſt, for the ſpace of als mony zeiris *ſucceſſive* followand thairefter, or for ony uther ſpace, termis or zeiris, conform to the lawis of this realme; and gif it happin the ſettar thairof to deceis befoir the iſhe and end of the ſamin, the parochineris

neris, tenentis and occupyaris of the saidis landis aucht and sould mak payment of thair teindis to the takisman, during the time and space contenit in his tak, and he, induring the said space, sould reddily intend and obey, efter the tenour of his tak to the successour of him quha set the samin. 23 *Januar.* 1558, Patrik Hepburn *contra* Patrik Bellenden. *Ult. Maij*, 1558, Johne Sempill *contra* William Abircrombie, 1 *t. c.* 756.

C. XXV. A tak set be a Vicar for mair nor thré zeiris onlie is null.

ANE tak and assedatioun of ony vicarage, teindis or proffeitis thairof, set be ony Vicar, fra thré zeiris to uther thré zeiris, during the space of sax zeiris, or fra thré zeiris to thré zeiris, during the space of nine zeiris, is null and of nane avail be way of exceptioun; becauſe a Vicar may not set ony langer takkis of his benefice than for the space of thré zeiris allanerlie. 17 *Decemb.* 1569, James Ker *contra* William Ker, 1 *t. c.* 898.

C. XXVI. Of him that refusis to deliver the thing set be him, he reſſavand arlis.

GIF ony man hyris and takis for maill ane ludging, chalmer, buith, or ony uther houſe, fra ane uther, and gevis him arlis or an carneſt-penny thairupon, and he that reſſavis the arlis refusis or postponis to enter him that gave the samin at the term aggreit on betwix thame; he may be callit and decernit to deliver the samin houſe, conform to his promiſe, or ellis ane uther als gude and convenient, for the like maill and dewtie. 13 *Junij*, 1550, 1 *t. c.* 692.

C. XXVII. The tenent beand stoppit to dwell in the houſe, sould not be compellit to pay the maillis thairof.

GIF ony man hes ane houſe or ludging in hyre, for payment of a certane maill, and gif the Kingis doaris, or men of weir, tak the keyis fra him, and suffer him not to bruik the houſe, he is not obliſt to pay the maillis for the space that he bruikit not the samin. 8 *Feb.* 1559, Joachim Holipage *contra* Robert Flemyng's *wife*, 1 *t. c.* 1235.

C. XXVIII. Of the Kingis rentallit tenentis.

ANE man beand rentallit in the Kingis rentall of ony landis, deceiſſand, and leivand behind him ane wife and bairnis, the bairnis aucht to be rentallit, and the wife sould bruik the samin for hir lifetime allanerlie, and hes na powar to put ony uther perſoun in the rentall. 4 *Maij*, 1554, 1 *t. c.* 1174.

C. XXIX. Privilege of Sanct *Mongo's* rentall.

GIF ony man be rentallit him alane in St. *Mongo*'s rental, in ony landis and poſſeſſiounis, and deceiſſis thairefter, his wife ſall bruik and joiſe the samin for all the dayis of hir lifetime, be privilege of St. *Mongo*'s widow. 1 *Mart.* 1532, *Relict of umquhile* Alane Heriot *contra M.* Robert Heriot, 1 *t. c.* 416.

C. XXX. Of him that makis ane aſsignay contrare his promiſe and obligatioun.

TAK and assedatioun of ony landis or poſſeſſiounis beand set to ony man, his airis and aſſignayis, and at the time of making thairof, or incontinent thairefter, he to quhom the samin is set, bindis and obliſſis him to the settar and gevar thairof, not to make ony aſſignay thairto; gif he thairefter conſtitutis or makis ony aſſignay, the samin is of nane avail, and alſwa the maker thairof tynis and foirfaultis his richt of the said assedatioun for all uther zeiris and termis contenit thairintill. *Pen. Nov.* 1533, *The Abbot of* Kilwinning *contra* N. Auchinleck, 1 *t. c.* 439.

C. XXXI. Ane tak set to ane man and ane woman, may be reducit, gif scho mary the secund husband without consent of the settar.

TAK and assedatioun set and gevin to ony widow, hir sub-tenentis and assignayis, or utherwayis, for certane zeiris, or for hir lifetime, of ony landis, mailling, or possessioun, may be reducit be the settar, and scho and hir sub-tenentis (gif scho ony maid) decernit to have tint and foirfaultit the samin, gif scho, efter the making of the said tak and assedatioun, maries ony man without consent askit and obtenit fra the maker and settar of the said assedatioun, albeit na sic clause nor restrictioun be contenit in the tak and assedatioun, 27 *Novemb.* 1531, Andro Seytoun *contra* Catherine Ogilvie. And all Baronis havand powar to hald court, may call all sic widowis, havand landis in tak and assedatioun of thame, for to heir and se the samin declarit of nane avail, for the cause foirsaid. 3 *Junij*, 1538, Jonet Kinghorne *contra the Laird of* Lamington, 1 *t. c.* 319.

C. XXXII. Of the ishe of a tak set be a liferenter.

TAK or assedatioun set be ony liferentar, induris allanerlie for the lifetime of the settar thairof, and quhill lauchfull warning be maid efter his deceis. 16 *Decemb.* 1551, Alexander Liddell *contra* James Home, 1 *t. c.* 38.

C. XXXIII. Of a tak set for service to be done.

ANE tak and assedatioun beand set and gevin to ony man for service to be done be him to the settar thairof, gif he to quhom the tak is set, beand requirit, refusis or postponis to do or mak the said service, he foirfaultis and tynes all richt and titill of the said assedatioun for the zeiris and termis zit to rin contenit thairintill, 28 *Julij*, 1536, *The Ladie* Glamis *contra* Johne Charterhous. The quhilk requisitioun and refuse may be provin be writ or witnessis. And the like is to be understuid of all uther giftis or dispositiounis maid to ony persoun for service done and to be done; for gif the ressaver thairof, beand requirit, refusis to do the samin, the gift and disposition is of nane avail, and may be reducit. 27 *Mart.* 1555, *The Quenis Grace, and the Ladie* Mortoun *contra the Schiref of* Edinburgh *and his deputis*, 1 *t. c.* 1029.

C. XXXIV. A tak may be reducit for non-payment of the dewtie.

TAK and assedatioun set and gevin for payment of a certane dewtie, at a certane terme, may be reducit and declarit of nane avail, gif he to quhom the samin is gevin failzeis to mak payment at the said day, of the dewtie, or of ony part, litle or mekle, of the samin, albeit na provisioun or clause be contenit in the said assedatioun heiranent. 29 *Junij*, 1551, *The Lady* Bothwell *contra N.* Henrisone, 2 *t. c.* 233.

C. XXXV. A tak may fall in escheit be rebellioun of him to quhom the samin is set.

TAK and assedatioun of ony rowmis, landis, teindis, fischingis, steidingis or possessiounis, maid and gevin to ony persoun quha thairefter happinis to be denuncit rebell, and put to the horn, cumis in the Kingis handis as eschete, and pertenis to his Hienes for all the termis to rin contenit in the samin; except to quhom the samin is gevin, befoir his denunciatioun, renuncit and overgave the samin, in the handis of him that set the samin, and maid lauchfull intimatioun thairof to him, swa that he thairby came in possessioun, and remanit still thairin, ather be himself, or utheris in his name, like as he had never set or gevin the said tak: And gif the samin tak and assedatioun wes set be ony ecclesiastical persoun, with consent of his convent, it is not necessare that intima-

matioun of the discharge, or renunciatioun thairof, be maid to the convent, albeit in like wayis thay wer settaris and makeris of the said tak; bot it is sufficient to intimat the samin to the said ecclesiasticall persoun allanerlie, becauſe the convent is not hurt or prejudgit be the renunciatioun or over-giving of the samin. 20 *Maij*, 1566, *Erle of* Lennox *contra the Lord Duke*, 1 *t. c.* 882.

C. XXXVI. Anent renunciatioun of a tak.

GIF ane man hes tak and assedatioun of ony landis set and disponit to him be the proprietar thairof, and, befoir the ishe and end of the said tak, obtenis and ressavis heritabill infeftment of the samin landis, with possessioun conform thairto, fra the said proprietar thairof, under reversioun gevin to the said proprietar and his airis, for out-quyting and redeming of the samin; and thairefter the samin landis be redemit be virtue of the said reversioun be the proprietar; and he quha obtenit the said heritabill infeftment thairof, grant the samin to be lauchfullie redemit, and then renuncis all richt, titill of richt, propertie and possessioun quhilk he had, hes, or may have thairto in time cuming, is understuid to have renuncit in like maner the said tak and assedatioun maid be him befoir the obtening of the said heritabill infeftment; becauſe be acceptation and using of the said infeftment, he passed *tacite*, and in effect, fra the said tak and assedatioun, and prejudgit himself anent all richt competent to him, for all zeiris and termis to rin contenit thairin, fra the time of the ressaving of the said infeftment. 6 *Mart.* 1570, Cuthbert Dumbar *contra* William Dumbar, 1 *t. c.* 1068.

C. XXXVII. Reductioun of ane heritabill infeftment prejudgis not a precedand tak.

GIF ony man havand tak and assedatioun of landis for termis to rin, takis heritabill infeftment of the samin landis, the quhilk thairefter is reducit, and declarit to have bene fra the beginning, and to be now, and in all time cuming, of nane avail, force nor effect; he aucht and sould nevertheles bruik and joise the saidis landis, conform to his tak, becauſe he prejudgit not himself nor past fra the said tak, be taking and ressaving of the said infeftment, quhilk efterward was reducit as said is. 8 *Feb.* 1566, *The Laird of* Garthland *contra* Alexander Cambell, 2 *t. c.* 322.

C. XXXVIII. Ressaving of takkis prejudgis not the precedand liferent.

ANE havand landis disponit to him induring his lifetime, and be vertue thairof being in possessioun, and takand thairefter takkis of the samin landis fra the gevar of the liferent, or fra his airis, for certane zeiris, prejudgis not himself thairby anent his liferent, and thairfoir the saidis zeiris beand outrun befoir his deceis, he may nevertheles bruik the landis induring his lifetime, be ressoun of the liferent, 18 *Decemb.* 1565, *N.* Sinclare *contra* Adame Manderstoun, 2 *t. c.* 315. *Item*, Gif ony teindis, with ony housis or biggingis of prelacies, pertening to the kirkmen, quhilk was usit and wont to be set in tak and assedatioun, for certane sowmis of money, and for the uphalding of the said place with zairdis and orchardis thairof in all necessaris, happinis to be set in assedatioun for the saidis sowmis of money allanerlie, na mentioun of the uphalding of the said place beand maid thairin; the samin assedatioun is of nane avail, force nor effect, and may be reducit at the instance of his successouris quha set the samin. 19 *Maij*, 1542, James Prior *of* Sanctandrois *contra* David Ramsay, 1 *t. c.* 545.

ITEM,

C. XXXIX. Of a takkiſman troublit within the time of his takkis.

ITEM, Gif ony tenent clamis a ſett of landis to joiſe peiceablie for certane termis, of Lord or Lady, and thay termis be run and fulfillit, and he alledgis na impediment within the ſaidis termis maid, it is ſlane in the ſelf; for quhy, gif ony lauchfull diſtribulance had bene maid to the tenent within his termis, the tenent aucht, be the commoun law of *Scotland*, to have tane lauchfull witneſſis thairupon, quhat time, quhat zeir, and be quhat perſoun or partie, or quhat day, and quhairin his diſtribulance was maid, and to have kend the partie befoir ane Judge ſpirituall or temporall, within fortie dayis efter that he was diſtribulat, and then tane ane inſtrument and uther ſufficient witneſſis; that beand done, that he micht proteſt to re-enter to his tak of new agane; for his naikit ſay is not aneuch in that matter. *R. M. fol.* 763.

C. XL. Anent ſub-tenentis.

Bot gif his ſet and tak ſpecifie not, with powar to mak ſub-tenentis, and he mak ſub-tenentis thairattour, his tak foirfaltis of the ſelf. *R. M. fol.* 764.

C. XLI. The tenent deſtroyand the wod foirfaultis his takkis.

ITEM, Gif his Lord or his Lady have wod upon the ground, and the tenent be ane commoun deſtroyer of his wod, he birning, geving, or ſelling, or bigging, but deliverance or powar of the Lord or Lady, he may be greitlie tinſallit and foirfaltit of his tak: And gif the tenent gevis or ſellis his houſis of the ground, bot leive of the Lord or Lady, the tenent may be put in greit tinſell to the Lord or Lady, and foirfalt his tak. *R. M. fol.* 764.

C. XLII. *Tacita locatia.*

GIF ony man be in poſſeſſioun of ony landis, fiſehingis, rentis, or uther dewteis, he may not, induring the time of his relocatioun, be removit thairfra. And *firſt*, It is to wit, that *tacita relocatio* is, gif the tenent that is in poſſeſſioun pay maillis, ariage, cariage, or ony uther dewtie, in ſic maner as he had wont to do of befoir, or as utheris tenentis or mailleris payis for ſiclike takkis. *Pen. Julij*, 1540, *M.* William Arthure *contra the Takiſmen of* Holemilne, 1 *t. c.* 514. *Secundlie*, *Tacita relocatio* is underſtuid to be, quhen the Lord of the ground, or ony in his name, takis or reſſavis fra the tenent, or ony in his name, ony maillis, dewties or ſervice, efter the iſhe and end of his takkis, quhilk he had of befoir, quhidder he reſſave the ſamin befoir the warning or not, 16 *Julij*, 1533. *Pen. Julij*, 1540. Or gif he reſſavis ony gerſum, or ony thing in name thairof, in that cais he may not remove the tenent during the zeiris and termis for the quhilk the gerſum is gevin and reſſavit, provyding that the geving and reſſaving thairof be provin be writ. 4 *Feb.* 1558, *Biſchop of* Dumblane *contra* Johne Drummond. 15 *April.* 1559, 1 *t. c.* 936. *Thridly*, *Tacita relocatio*, is, gif the Lord of the ground, or maiſter, mak not warning to the tenent at the term of *Whitſounday*, albeit the tenent have na takkis for termis to rin: And thairfoir ane tenent being in poſſeſſioun, as tenent or mailler of ony landis, cloiſit within termis, and not lauchfullie warnit befoir the feiſt of *Whitſounday*, may not be removit fra his ſaid mailling, bot may remane ſtill in poſſeſſioun thairof, without ony danger or perill of law, ay and quhill he be lauchfullie warnit to remove thairfra, albeit he have na tak or aſſedatioun for ony term or termis to rin, 3 *Decemb.* 1534, 1 *t. c.* 991. *Item*,

Ane

Ane man havand tak and aſſedatioun of teindis, landis, or ony uther poſſeſſioun, and all the zeiris and termis contenit thairin already expyrit, gif he remanis in poſſeſſioun, na inhibitioun nor warning being maid to him thairanent, he, *per tacitam relocationem*, hes juſt titill and richt to intromet with the ſaidis teindis, or remane in poſſeſſioun of the ſaidis landis, untill inhibitioun or warning be maid to him, he payand ſiclike dewtie thairfoir as he was wont to pay, be reſſoun of the ſaid aſſedatioun, *Ult. Julij*, 1550, 1 *t. c.* 1123. *Fifthly*, *Tacita relocatio* is, gif ane man, efter the iſche of his takkis, ſet be him of befoir, reſſavis foir-maill for the ſamin landis, fra the ſamin tenent to quhom the ſaid tak was ſet, 26 *Junij*, 1553, 1 *t. c.* 1162. *Sixthly*, Warning beand maid to the ſub-tenent to flit and remove, the principal tenent not beand warnit, is underſtuid to be and remane in poſſeſſioun *per tacitam relocationem*, albeit his tak and aſſedatioun be expyrit, 8 *Mart.* 1540, 2 *t. c.* 26. *Item*, He that is in poſſeſſioun *per tacitam relocationem*, of teindis, landis, or ony mailling or dewtie, is on na wayis wrangous or violent poſſeſſour, nather may be compellit, bot onlie to pay the zeirlie maillis, fermis, or dewties, quhilkis he uſit and wont to pay of befoir. 8 *Mart.* 1540. 26 *Mart.* 1544, 2 *t. c.* 25. *Item*, *Tacita relocatio* induris and laſtis ay and quhill lauchfull warning be maid to the poſſeſſour, being in poſſeſſioun of befoir, be virtue of ane titill. 20 *Feb.* 1552, 1 *t. c.* 1155.

Anent buying and ſelling.

C. I. The nature of buying and ſelling.

GUDIS and geir may be auchtand be, and clamit fra ony man, be reſſoun of buying and ſelling; and quhen ane man ſellis a thing to ane uther, the uther ſall give the price thairof to the ſellar, and the ſellar ſould deliver the thing ſauld and bocht to the uther, *Lib.* 3. *c.* 8. *Item*, Buying and ſelling is endit and perfytit, and hes force, ſtrenth and effect, efter that it is accordit and aggreit betwix the parteis contracteris anent the price that ſould be gevin, and the ſamin is paid in haill or in part to the ſellar, and efter aggreance maid of the price, and deliverance is maid of the thing bocht and ſauld: And in thir twa caiſis foirſaid, *viz.* quhen the price, or ony part thairof, is paid, or quhen the price beand maid, the thing that is bocht and ſauld is deliverit, it is not leaſum to ather of the parties to revoke at thair awin will, and paſs fra the ſaid contract of buying and ſelling, without the conſent of the uther partie; except he do the ſamin for ane juſt and reſſonabill cauſe, or except it be ſwa accordit and aggreit betwix thame, that it ſall be leaſum to ather of thame to rew and repent within ane certane day and term; for it is generallie trew, that particular conventiounis, leaſumlie maid betwix parties, ſould be obſervit and kept, notwithſtanding ony general reull or law maid thairanent, *Lib.* 3. *c.* 8. *Item*, Buying and ſelling is endit and perfytit efter that arlis is gevin be the buyar, and reſſavit be the ſellar; and efter the ſamin is gevin and reſſavit, and the thing bocht, nor na part thairof deliverit, gif the buyar wald paſs fra the contract, he may leaſumlie do the ſamin, with tinſell of his arlis that he hes gevin; the quhilk in this cais ſould re-

mane and pertene to the ſellar to quhom it was gevin: And ſiclike, gif the ſellar, efter the receipt of the arlis, repentis or rewis, in this cais he ſall not be in better eſtait and conditioun nor the uther: And likeas the buyar repentand tynis the carneſt that he gave, ſiclike the ſellar, paſſing fra his contract of ſelling, may be compellit to reſtoir the doubill of the arlis, *viz.* all that quhilk he reſſavit in name of arlis, togidder with als mekle effeirand to the quantitie and valour thairof. *Lib.* 3. *c.* 8. *De jud. c.* 145.

C. II. Of peril of thingis bocht and ſauld.

CONCERNING the peril of thingis bocht and ſauld, it is to wit, that the ſellar is haldin to warrand that thing quhilk he hes ſauld to the uther, and to his airis, gif it be ony thing immovabill, as land or tenement, or zit movabill: And gif the ſamin be challengit fra the buyar and his airis, he fra quhom the ſamin is aſkit, ſall have gude actioun and richt to perſew the ſellar and his airis for warrandice thairof, *Lib.* 3. *c.* 8. *in* Purves *&* Methven. *Item*, It is generallie of veritie, that gif it happinis ony thing that is bocht and ſauld to periſh, be tint, or maid worſe, efter the buying and ſelling, the peril and ſkaith thairof pertenis and redoundis to him that is poſſeſſour of the ſamin, except ſpecial proviſioun be maid in the contrare. *Lib.* 3. *c.* 8. *De jud. c.* 145.

C. III. Nathing ſould be bocht and ſauld without a ſure borgh or pledge.

IT is ſtatute and ordanit be King *David*, that na perſoun buy ony thing, except the ſellar find him ane ſufficient pledge thairanent, and borgh of hamehald: And gif the thing that is bocht be clamit and challengit be ony man fra the buyar, and at that time the buyar may not find the lauchfull pledge or borgh thairof, he ſall tyne that quhilk he hes bocht, and the ſamin ſall be adjudgit to the perſewar, gif he hes ony richt or reſſoun thairto: And gif the pledge and borgh beand callit, refuſis to do that quhilk he aucht to do of law and reſſoun, he may be decernit to give to the challenger the triple of the thing challengit; and attour ſall give to the King for his unlaw, viij. ky: And the ſellar quha ſufferit his pledge and borgh to incur the ſaid damnage and ſkaith, and being warnit, wald not compeir and releive him anent his burrow-gang, ſall be fra thyne furth ane out-law in all partis of this realme, *Lib.* 1. *c.* 19. *Stat. Alex. c.* 13. *Item*, Na perſoun ſould buy ony thing within burgh, bot gif he have ane lauchful borgh, or pledge thairof, except it be meit, claithis, or ar rayment readie to wear, and ſic uther ſmall merchandice: And quha dois in the contrare, ſall tyne and foirfault all that quhilk he hes bocht, albeit he bocht the ſamin lauchfullie, quhenſoever the ſamin is clamit and challengit fra him be ony havand richt thairto. *Leg. Foreſt. c.* 49. *De jud. c.* 37.

C. IV. The buying of the patronage of ony kirk.

GIF ony man buyis the advocatioun and patronage of ony kirk, the ſamin buying is unproffitabill, and of nane avail; gif the buyer is not infeft in the landis pertening and annexit to the ſaid patronage. *De jud. c.* 106.

C. V. Buying and ſelling of victuallis.

ITEM, It is leaſum to all and ſindrie our ſoverane Lordis liegis, to buy victuallis within ony part of this realme, and to carry and bring the ſamin, without ony impediment, to ony port or part with-

within this realme, as thay ſall think expedient, payand alwayis the cuſtume thairfoir. *Rob.* III. *c.* 9.

ITEM, It is leaſum to ony mail-payer havand landis ſet to him to ane certane term, for ferm or maill, to give or ſet quhom to he pleaſis the fermis and maillis befoir the term; bot the term being bypaſt, he may not do the ſamin without his maiſteris licence. *Leg. Foreſt. c.* 428. *De judic. c.* 6. C. VI. Buying and ſelling of maillis.

ANENT buyeris of victual, and keiparis thairof till ane derth. *Ja.* II. *fol.* 30. *act.* 23. 19 *Jan.* 1449. C. VII.

THAT na burges, or uther perſoun, hald mair victual than will ſuſtene him; and that na man hald auld ſtakkis in his zaird langer than *July*. *Ja.* II. *fol.* 30. *act.* 24. 19 *Jan.* 1449. *Mar. R. fol.* 173. *act.* 5. 4 *Junij*, 1563. C. VIII.

GIRNELLING of victual forbidden. *Ja.* II. *fol.* 33. *act.* 39. 26 *Aug.* 1452. C. IX.

THAT na man hald mair victual than will ſuſtene himſelf. *Ja.* II. *fol.* 33. *act.* 40. 26 *Aug.* 1452. C. X.

THAT beif and mutton cum to the mercat with ſkin and birne. *Mar. R. fol.* 179. *act.* 21. 4 *Junij*, 1563. C. XI.

ANENT the meill mercat of *Edinburgh*. *Ja.* V. *fol.* 137. *act.* 83. 14 *Martij*, 1540. C. XII.

THRIE mercat dayis for ſelling of breid in *Edinburgh* by all the Kingis liegis. *Ja.* V. *fol.* 141. *act.* 103. C. XIII.

THRIE mercat dayis for ſelling of fleſche in *Edinburgh*. *Ja.* V. *fol.* 141. *act.* 104. C. XIV.

OF the price, gudenes and fines of victuallis, and all uther maner of ſtuffe wrocht. *Ja.* IV. *fol.* 101. *act.* 99. 13 *Junij*, 1496. C. XV.

Prices of meittis and claithis.

OF the prices of wylde and tame meittis. *Mar. R. fol.* 151. *act.* 11. 1 *Feb.* 1551. C. I.

ANENT the ordouring of everie mannis hous. *Mar. R. fol.* 156. *act.* 31. 1 *Feb.* 1551. C. II.

Anent eiting of fleſch in *Lentron*, and uther dayis, forbidden. *Mar. R. fol.* 161. *act.* 9. 20 *Junij*, 1555. C. III.

ANENT perſounis that ſall weir claithis of ſilk and furringis. *Ja.* I. *fol.* 20. *act.* 133. 6 *Martij*, 1429. C. IV.

OF

C. V. OF coiſtly cleithing, and that na woman cum to the kirk muſſallit. *Ja.* II. *fol.* 41. *act.* 78. 6 *Martij*, 1457. *Ja.* VI. *fol.* 13. *act.* 18. 24 *Octob.* 1581.

C. VI. THAT nane weir ſilkis within ane hundreth pundis worth of land. *Ja.* III. *fol.* 56. *act.* 57. 8 *Aug.* 1571.

C. VII. ANENT ſelling of ſalmound out of the realme. *Ja.* I. *fol.* 23. *act.* 147. 15 *Octob.* 1431.

C. VIII. TUICHING the ſelling of ſalmound till *Ingliſhmen*. *Ja.* I. *fol.* 25. *act.* 163. 22 *Octob.* 1436.

C. IX. THE ſtatute anent *Inglis* claith. *Ja.* I. *fol.* 25. *act.* 162. 22 *Octob.* 1436.

C X. ANENT woll, and uther ſtapill gudis cuſtumabill. *Mar. R. fol.* 164. *act.* 19. 20 *Junij*, 1555.

C. XI. ANENT tranſporting of forbidden gudis out of the realme. *Ja.* VI. *act.* 5. *ult. April.* 1573.

C. XII. ANENT the prices payabill to ferryaris. *Mar. R. fol.* 154. *act.* 23. 1 *Feb.* 1551.

Forbidden gudis.

C. I. THAT na coillis be had furth of the realme. *Mar. R. fol.* 179. *act.* 20. 4 *Junij*, 1563. *Ja.* VI. *fol.* 16. *act.* 24. 20 *Octob.* 1579.

C. II. SALT ſould not be tranſportit. *Ja.* VI. *fol.* 1. *act.* 2. 30 *April.* 1573.

C. III. ANENT talloun and ſalt hydis. *Ja.* III. *fol.* 74. *act.* 115. 24 *Junij*, 1483. *Ja.* V. *fol.* 141. *act.* 105. 14 *Martij*, 1540.

C. IV. OF ſelling of horſe out of the realme. *Ja.* I. *fol.* 6. *act.* 34. 12 *Mart.* 1424. *Ja.* VI. *fol.* 19. *act.* 28. 15 *Decemb.* 1567.

C. V. THAT na cattell be ſauld in *Ingland* bot for reddy gold or ſilver. *Ja.* II. *fol.* 33. *act.* 36. 25 *Octob.* 1451.

C. VI. THAT na man ſell nolt nor ſcheip to *Ingliſhmen*, nor ſend victuellis, fiſche, nor ſalt in *Ingland*. *Ja.* V. *fol.* 121. *act.* 22. 7 *Junij*, 1535.

C. VII. QUHYTE fiſche. *Ja.* V. *fol.* 136. *act.* 78. 14 *Martij*, 1540. *Mar. R. fol.* 157. *act.* 34. 1 *Feb.* 1551.

C. VIII. ANENT the having of talloun, victuallis, and fleſche, furth of this realme. *Mar. R. fol.* 162. *act.* 14. 20 *Junij*, 1555.

C. IX. ANENT the carrying of fleſche furth of this realme in ſchippis

pis, under cullour of victualling. *Ja.* VI. *fol.* 2. *act.* 7. 25 *Julij*, 1578.

ANENT packing, peilling, foirſtalling and tranſporting of hering and quhyte fiſche. *Ja.* VI. *fol.* 14. *act.* 20. 20 *Octob.* 1579. C. X.

Quhat thingis merchantis ſould bring hame.

HARNES to be brought hame be merchandis. *Ja.* I. *fol.* 8. *act.* 52. 11 *Mart.* 1425. C. I.

FOR hame bringing of hagbuttis. *Ja.* V. *fol.* 135. *act.* 74. 14 *Mart.* 1540. C. II.

OF hame bringing of bulzeon be merchandis. *Ja.* I. *fol.* 24. *act.* 160. 22 *Octob.* 1436. *Ja.* II. *fol.* 38. *act.* 64. 19 *Octob.* 1456. *Ja.* III. *fol.* 50. *act.* 29. 12 *Jan.* 1467. *Ja.* III. *fol.* 58. *act.* 63. 9 *Maij*, 1474. *fol.* 60. *act.* 80. 20 *Novemb.* 1475. *Ja.* IV. *fol.* 87. *act.* 30. 15 *Feb.* 1489. C. III.

Anent fairis and mercattis.

C. I. Privilege and peace of fairis.

IT is ſtatute and ordanit, anent all fairis within the Kingis burgh, that efter the fair be proclamit and cryit, na man be tane nor attachit in the fair for ony cauſe or crime; bot gif he had brokin the peice of the fair, in cuming or ganging thairfra, or gif he be the Kingis out-law, or ane traitour, or ony uther treſpaſſour, unworthie to bruik and joiſe the peice of the kirk, ſic as thay quha ſpuilzies and waiſtis landis or houſis in time of nicht, or oppin and notorious brigantis, or riveris of paſſengeris in commoun wayis and paſſagis, or excommunicat and curſt perſounis; the quhilkis miſdoaris, efter thay ar declarit to be unworthie of the libertie and peice of halie kirk, may be attachit in fairis at ony time, notwithſtanding the peice thairof, and ſall be haldin and kept ſikkerlie unto the court of the fair, and thay ſall anſwer to ſic thingis as thay ar attachit for, *Leg. burg. c.* 89. *Item*, Gif ony man find his man or ſervand that hes bene fugitive, and run fra him, in the fair, he may not tak nor attache him ſa lang as the peice of the fair induris. *Leg. burg. c.* 91.

C. II. Of gudis thiftuouſlie ſtollin and apprehendit in the fair.

ITEM, Gif ony man findis in the fair ony of his awin gudis and geir that is ſtollin or robbit fra him, or utherwayis tint, he ſould cauſe him in quhais poſſeſſioun the ſamin is found, compeir befoir the Judge of the fair, and thair declair quha is his maiſter, and quhair he dwellis, and compell him to find ſufficient pledge and borgh befoir the ſaid Judge, that he ſall preſent the ſaidis gudis and geir the fiftene day nixt followand efter the fair, in ſic place as the ſaid Judge ſhall limit and appoint to that effect, and that he ſall thair anſwer thairanent, to be challengit as law will: And gif he find na pledge nor borgh, the Judge ſall keip and retene the ſaidis gudis and geir untill he find ſicker pledge and borgh, to the effect

foirſaid, to the ſaid challenger; or the Judge may keip the ſamin unto the nixt court of the fair; and gif he that is challengit find borgh at that court, as ſaid is, the gudis and geir ſall be deliverit to him in keiping, to be furthcumand as law will, at the day and place appointit be the Judge: At the quhilk day and place, gif he that is challengit compeiris, the challenger ſall challenge his gudis and geir, and perſew his richt and actioun as effeiris of the law: And gif he that is challengit compeir not at the court of the fair, the gudis and geir quhilk war befoir in keiping of the Judge, ſall be deliverit to the challenger, he findand ſicker borgh that the ſamin ſall be furthcumand, as law will, to all perſounis havand or pretendand to have entres thairto in ony time heirefter; and that the ſaid challenger being ſummondit and requirit thairto, ſall produce and exhibit the ſamin gudis and geir in the ſamin place quhair he reſſavit thame, ſiclike and als gude as thay war the time of his receipt, or ellis the price and valour thairof, gif it happinis the gudis and geir to periſh, ſpill, or be maid worſe in his keiping; and to do all and quhatſumever thairanent that accordis of the law. *Leg. burg. c.* 90.

C. III. That up landis men bring thair gudis to the principal mercat of the ſchire.

IT is ſtatute and ordanit, that all frehalderis, huſbandmen, and labouraris of the ground, dwelland upaland, within ony of our ſoverane Lordis ſchirefdomis, and havand ony movabill gudis and geir to ſell, ſall cum to na uther mercat thairwith, bot allanerlie to the Kingis mercat of the ſchirefdom quhairin thay dwell: And gif ony beis convict to have done in the contrare, he ſall pay ane unlaw of viij. ſchillingis, and ſall tyne and foirfault the gudis and geir caryit be him to ony uther mercat. *De jud. c.* 22.

C. IV. ANENT the dewteis aucht to the Kingis Officiaris, of gudis and geir brought to the fair; and that na extortiounis be uſit upon the Kingis liegis at fairis. *Ja.* II. *fol.* 39. *act.* 66, *&* 67. 19 *Octob.* 1456. *&* *fol.* 43. *act.* 86. 6 *Martij*, 1457. *Ja.* III. *fol.* 53. *act.* 41. 20 *Novemb.* 1469.

C. V. FAIRIS or mercattis ſould not be haldin upon haly dayis, within kirk or kirk zaird. *Ja.* III. *fol.* 53. *act.* 42. 20 *Novemb.* 1469. *Ja.* IV. *fol.* 106. *act.* 118. 11 *Mart.* 1503. *Ja.* VI. *fol.* 4. *act.* 3. 20 *Octob.* 1579.

C. VI. BEIF and mutton ſould be brocht to the mercat with ſkin and birne. *Mar. R. fol.* 179. *act.* 21. 4 *Junij*, 1563.

Anent money.

C. I. IT is not leaſum to ſtrike money without the Kingis licence. *Ja.* II. *fol.* 31. *act.* 30. 19 *Jan.* 1449.

C. II. THE valour and price of money, and ſindrie kindis thairof. *Ja.* II. *fol.* 38. *act.* 64. 19 *Octob.* 1456. *Ja.* III. *fol.* 49. *act.* 22. 12 *Octob.* 1467. *fol.* 50. *act.* 26, *&* 29. 12 *Jan.* 1467. *fol.* 60, *&* 61. *act.* 80, *&* 83. 20 *Novemb.* 1465. *fol.* 71. *act.* 108. 24 *Feb.* 1483.

1483. *Ja.* IV. *fol.* 88. *act.* 34. 15 *Feb.* 1489. *Ja.* VI. *fol.* 7. *act.* 10. 24 *Octob.* 1581.

C. III. MONEY ſould not be carryit furth of the realme. *Ja.* I. *fol.* 4. *act.* 17. 26 *Maij*, 1424. *&* *fol.* 8. *act.* 55. 11 *Mart.* 1425. *fol.* 14. *act.* 94. 1 *Julij*, 1427. *fol.* 25. *act.* 166. 22 *Octob.* 1436. *Ja.* II. *fol.* 31. *act.* 30. 19 *Jan.* 1449. *Ja.* III. *fol.* 47. *act.* 10. 9 *Octob.* 1466. *fol.* 50. *act.* 29. 12 *Jan.* 1467. *Ja.* IV. *fol.* 104. *act.* 102. 11 *Mart.* 1503. *Ja.* V. *fol.* 138. *act.* 89. 14 *Martij*, 1540. *Mar. R. fol.* 172. *act.* 3. 4 *Junij*, 1563.

C. IV. LAY or black money ordanit to be cunzeit. *Ja.* III. *fol.* 47. *act.* 12. 31 *Jan.* 1466. And ſould be done with conſent of the eſtatis. *Ja.* VI. *fol.* 16. *act.* 21. 15 *Dec.* 1567.

C. V. LAY or black money ſould not be brocht within the realme, and the Kingis black money allanerlie ſould be tane in payment. *Ja.* III. *fol.* 55. *act.* 51. 20 *Novemb.* 1469.

C. VI. LAY money, ſic as plakkis, ſould be brocht to the cunzie hous. *Ja.* III. *fol.* 74. *act.* 114. 24 *Feb.* 1483.

C. VII. MONEY ſould not be meltit or brokin down. *Ja.* III. *fol.* 61. *act.* 81. 20 *Novemb.* 1475. *Ja.* VI. *fol.* 17. *act.* 21. 15 *Dec.* 1567.

C. VIII. MONEY cunzeit, not beand of juſt weicht, the cunzeour thairof ſall be puniſt to the deid. *Ja.* II. *fol.* 31. *act.* 30. 19 *Jan.* 1449. *fol.* 88. *act.* 34. 15 *Feb.* 1489.

C. IX. VALOUR of money ſauld in the cunzie hous, ſould be modifyit be Goldſmithis. *Ja.* IV. *Ibid.*

C. X. MAISTER of cunzie ſould be ane ſubſtantious man, and ſall forge money to ſerve the Kingis liegis. *Ibid.*

C. XI. MONEY may be ſtrickin be the King quhen he thinkis the ſamin ſpeidfull and proffitabill. *Ja.* I. *fol.* 5. *act.* 25. 26 *Maij*, 1424, quhilk command ſould be under the greit ſeill. *Ja.* II. *fol.* 31. *act.* 30. 19 *Jan.* 1449.

C. XII. MONEY ſould be ſtricken in like wecht and fyneſſe, conform to the money of *England*. *Ja.* I. *fol.* 5. *act.* 25. 26 *Maij*, 1424. Quhilk is done be cummand of the thré eſtatis in divers kindis of cunzie. *Ja.* II. *fol.* 32. *act.* 34. 28 *Julij*, 1540. *Ja.* III. *fol.* 70. *act.* 108. 24 *Feb.* 1483. *Ja.* IV. *fol.* 83. *act.* 10. 6 *Octob.* 1488.

C. XIII. MONEY being cryit down to ane lawer price, payment ſould be maid conform to the valour of the ſamin money, befoir the down-crying thairof. *Ja.* III. *fol.* 50. *act.* 29. 12 *Jan.* 1467.

C. XIV. MONEY to be cunzeit of the like fynes as in uther realmis. *Ja.* VI. *fol.* 16. *act.* 21. 15 *Dec.* 1567.

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C. XV. THE money of the realme being alterit in valour, and cryed up, paymentis of debtis ſould be maid conform to the valour of the money, befoir the raiſing thairof. *Ja.* II. *fol.* 33. *act.* 38. 25 *Octob.* 1451. *Ja.* III. *fol.* 49. *act.* 21. 12 *Octob.* 1467. *& fol.* 50. *act.* 29. 12 *Jan.* 1467. *& fol.* 61. *act.* 84. 20 *Novemb.* 1475.

C. XVI. OF refuſing of gold that is crackit. *Ja.* IV. *fol.* 94. *act.* 61. 18 *Maij*, 1491. *& fol.* 96. *act.* 71. 6 *Junij*, 1493. *& fol.* 88. *act.* 34. 15 *Feb.* 1489.

C. XVII. MONEY, albeit it be crackit or flawit, ſould have courſe, and ſould not be refuſit. *Ja.* IV. *fol.* 109. *act.* 133. 11 *Mart.* 1503.

Anent teſtamentis and latter willis.

C. I. *Quis poteſt.* IT is leaſum to all fremen, that ar not auchtand greit debtis to ony uther, to mak ane juſt and reſſonabill teſtament in time of ſeiknes, and diſpone upon thair movabill gudis and geir, *Lib.* 2. *c.* 38. *De jud. c.* 120. Bot na man in his latter will, or in time of ſeiknes, may mak teſtament, or ony diſpoſitioun of his heritage, or ony part thairof, in hurt of his air, as at mair lenth is exponit in ane uther place. *Lib.* 2. *c.* 36.

C II. It is leaſum to Biſchoppis to mak teſtament. ALL Biſchoppis within this realme have libertie, fredome and powar to mak ane teſtament and latter will, and to diſpone at thair pleaſour, conform to the lawis of this realme, upon all and ſindrie movabill gudis, inſicht pleniſhing of houſis, jowellis, cornis, cattell, or uther geir quhatſumever pertening to thame the time of thair deceis. 24 *Sept. A. D.* 1451. 1 *t. c.* 343.

C. III. Women may mak teſtament. *ITEM*, Ane woman that is fré, and not under ſubjectioun to ane husband, may mak ane teſtament of hir gudis and geir, *Lib.* 2. *c.* 35. And thairfoir widowis may leive in legacie, in thair latter will, the mailis, fermis and dewteis of landis, and tenementis pertening to thame, be reſſoun of dowrie or utherwayis: Bot thay may mak na diſpoſitioun of ony dewtie or ſervice auchtand furth of thair dowrie to the proprietar and awner thairof, *Rob.* III. *c.* 23. Bot ane woman beand cled with ane huſband, and thairby in his powar and ſubjectioun, may diſpone and give na thing in hir latter will without his conſent and authoritie; becauſe ſcho hirſelf, and all hir gudis, ar at the diſpoſitioun of hir huſband, *Lib.* 2. *c.* 35. *De jud. c.* 120. And nevertheles, the husband dois ane honeſt and godlie thing, gif he permittis and grantis to his wife licence and powar to mak teſtament of that part of thé gudis and geir quhilk ſould have pertenit to hir, gif ſcho had happinit to live efter him. *Lib.* 2. *c.* 35.

C. IV. A furious perſoun may not mak teſtament. NA furious man, nor utherwayis *impos mentis*, may mak ane teſtament, or ony uther diſpoſitioun of his gudis and geir, induring the time of his furioſitie and imperfectioun; and gif he dois, the ſa-

ſamin is of nane avail, be way of exceptioun, 16 *Julij*, 1563, Thomas Archibald *contra* James Clerk, 1 *t. c.* 1303. *Item*, He that is naturally deif or dumb, and he that is male, and is not fourtene zeiris of age complete, may not mak ane teſtument. *De except. c.* 10. *ex lib. Scon.*

C. V. How he that is burdenit with debtis may mak teſtament.

ITEM, Gif ony man be burdenit with debtis auchtand be him to utheris, his debtis not beand paid, he may not mak ony legacie, or ſic uther diſpoſitioun, of his movabill gudis and geir, in his teſtament, bot gif his air conſent to the making thairof; becauſe the air is obliſt to pay of his awin gudis and geir, (gif he ocht hes) the debtis auchtand be his predeceſſour that is deceiſt, the time of his deceis, gif he enteris air to him, and gif the gudis quhilkis pertenit to the deid be not ſufficient for payment thairof. *Lib.* 2. *c.* 77.

C. VI. The deidis debtis ſould be firſt paid.

GIF ony man deceis, leivand gudis and geir behind him, the debtis auchtand be him the time of his deceis ſould be firſt paid furth of the movabill gudis quhilkis pertenit to him the time of his deceis; and the executouris may intromet with the deidis part of the gudis reſtand, efter the payment of the debtis, and ar bund and obliſt to pay all legacies furth of the ſamin, togidder with xij. *d.* of ilk pund thairof, for the quot and confirmatioun of the teſtament. 13 *Jul.* 1420. *in ſynodo generali apud Perth*, 2 *t. c.* 349.

C. VII. Of the diviſioun of the gudis and geir in thré partis.

ITEM, Efter that the debtis auchtand be the maker of the teſtament ar compleitlie paid or defalkit, togidder with the airſchip gudis juſtlie pertening to the air, gif the ſaid maker hes lauchfull wife and bairnis, all the ſuperplus, and reſt of the movabill gudis and geir pertenand to him the time of the making of the ſaid teſtament, ſould be devydit in thré partis; quhairof one ſould be gevin to the bairnis to be devydit amangis thame, gevand to ilk ane of thame thair awin bairnis part thairof; the ſecund part pertenis to the wife; the thrid part is reſervit to the huſband, quha may mak teſtament thairof, and diſpone the ſamin frelie, at his awin will and pleaſour, *Lib.* 2. *c.* 36, *&* 37. *Item*, Be the law and conſuetude uſit and obſervit within burgh in this realme, paſt memorie of man, gif ony burges beget bairnis with his lauchful wife, and thairefter he or ſcho happinis to deceis, the thrid of all the gudis and geir pertenis to the bairnis, beand male or female, and the air ſall have the like portioun with the reſt of the bairnis, except he was foriſfamiliat be his father befoir his deceis. *Leg. burg. c.* 115. *Leg. Foreſt. c.* 40.

C. VIII. The diviſioun of the movabillis in twa partis.

GIF ony man havand ane lauchfull wife deceiſſis without bairnis gottin of his bodie, his debtis, and the airſchip beand paid or defalkit, as ſaid is, the ane equal half of all his movabill gudis and geir, quhilkis pertenit to him the time of his deceis, aucht and ſould pertene to his wife, and the uther half is underſtuid to be the deidis part, and thairfoir juſtlie pertenis to his executouris. 16 *Nov.* 1503, *Lady* Glamis *contra Lord* Gray, 1 *t. c.* 202. And ſiclike is underſtuid of him quha happinis to deceis, leivand behind him lauchful bairnis, without ane wife; for in this cais the ane half of the ſaid ſuperplus of his movabill gudis and geir pertenis to his bairnis, and ſould be equallie dividit amangis thame, and the uther half

pertenis to him, to be diſponit be him at his awin pleaſour. *Lib.* 2. *c.* 35. *in lib.* Purves.

C. IX. Bairnis foriſfamiliat ſould not have bairnis part of geir.

GIF ony man havand ane lauchful wife, and in like maner lauchful bairnis gottin of his bodie, the quhilkis bairnis ar all foriſfamiliat befoir his deceis, all his movabill gudis and geir pertenand to him the time of his deceis, ſould be dividit equallie in twa partis, *viz.* the deidis part, and the wife's part; becauſe the bairnis, beand foriſfamiliat, ſould have na part nor portioun thairof. 23 *Feb.* 1561. *Sir* William Hammiltoun *contra* Johne Wallace *of* Craigie, 1 *t. c.* 1277.

C. X. Anent the making and diſpoſitioun of legacie.

ITEM, Eſter the conſuetude of this realme, he that makis ane teſtament may, gif he pleis, leave thairin be legacie his beſt and principal gude and geir to his Lord, and thairefter ſumthing to halie kirk, and eſter that to ony uther perſoun he likis; bot na man may be conſtranit or compellit to mak legacie of ony thing pertening to him, bot eſter his awin will and pleaſour; for be the law of this realme, and be all uther lawis, ilk manis laſt will and deſire ſould be frank and fré, anent the diſpoſitioun of his gudis and geir. *Lib.* 2. *c.* 35.

C. XI. Of witneſſis in teſtamentis.

ANE teſtament, or latter will, ſould be maid befoir twa or ma witneſſis, lauchful men, ſpiritual or temporall, beand ſic perſounis as may be of the law lauchful and ſufficient witneſſis, *Lib.* 2. *c.* 37. And it is requirit, that all the witneſſis contenit in ane teſtament, be at the leaſt of fourtene zeiris of age, and alſo that thay be maillis; for na female nor women may be witneſſis in ane teſtament or latter will. *De except. c.* 13. *ex lib. Scon.*

C. XII. Of ſindrie teſtamentis maid be ane man, and of divers extractis.

HE quha is not forbiddin of the law to mak ane teſtament, may mak als mony teſtamentis als oft as he pleaſis, in time of his health, or of his ſeiknes, he alſo beand of richt judgment and underſtanding to do the ſamin; the quhilk gif he dois, the laſt teſtament or diſpoſitioun maid be him lauchfullie ſould be allanerlie keipit and obſervit, *De except. c.* 13. *ex lib. Scon.* And gif twa copies, or extractis, of ane teſtament be contrare or diſcrepant the ane to the uther, the copie quhilk is conform to the regiſter ſould have maiſt faith. 8 *Mar.* 1554, Duncan Huntar *contra* Thomas Huntar, 1 *t. c.* 1187.

C XIII. A man deceiſſand befoir a term, may not mak teſtament of the fermis thairof.

GIF ony man deceiſſis befoir the term of *Martinmas*, he may not leave by teſtament the fermis, maillis and dewteis of (or falling due at) the ſaid term, nor zit has his executour ony richt or titill thairto. 11 *Maij*, 1574, *The Laird of* Meldrum *contra the Laird of* Straloch, 2 *t. c.* 357.

C. XIV. Of the gudis pertening to him that deceiſt inteſtate.

GIF ony man deceis inteſtate, his gudis and geir ſall be diſponit be his narreſt kinniſmen, choſin thairto, and confirmit be ane eccleſiaſtical Judge; quha being ſwa admittit, ſould pay the debtis aucht-and be the deid the time of his deceis, ſwa far as the gudis extendis, eſter the ſamin manner as the executouris teſtamentaris aucht and ſould do. *Leg. Foreſt. c.* 59, 60. *ubi quæ dicuntur de eccleſia et ordinario loci, quia ſunt obſoleta, ad executores dativos tranſtuli.*

GIF

C. XV. Of the King is debtour deceiſſand.

GIF ony of the Kingis tenentis, haldand temporal landis of him, happinis to deceis, and the Kingis Schiref or Baillie ſchewis the Kingis patent letteris, quhairby he that is deceiſt was ſummondit befoir his deceis for debt auchtand be him to the King; it is leaſum to the Schiref or Baillie to attache, arreiſt, and mak inventar of the gudis that pertenit to him that is deceiſt, and may be apprehendit within the landis quhilkis he held of the King, extending to the valour of the ſaid debt, at the ſicht, and befoir lauchful and honeſt men, ſwa that the ſamin, nor na part thairof, may be removit nor tranſportit unto the time that the King be compleitlie paid of his debt; And the ſame beand paid, the ſuperplus of the ſaidis gudis ſall be deliverit to the executouris, to be gevin up be thame in teſtament. *Leg. Foreſt. c.* 58.

C. XVI. The narreſt of kin ſould have the gudis of him deceiſt unteſtate.

ITEM, Anent the article proponit, forſamekle as often times zoung perſounis deis, that may not mak teſtamentis, the ordinaris uſis to give thame executouris dativis to thair gudis, quhilkis intromettis thairwith, and withdrawis thair gudis fra the kin and freindis that ſould have the ſamin be the law; it is ſtatute and ordanit be the thré eſtatis of this preſent parliament, that quhair ony ſic perſounis deis within age, that may not mak thair teſtamentis, the narreſt of thair kin to ſucceid to thame ſall have thair gudis, without prejudice of the ordinaris, anent the quote of thair teſtamentis. *Ja. V. fol.* 141. *act.* 101. 14 *Mart.* 1540.

Anent executouris.

C. I. Executouris ar teſtamentar or dative.

EXECUTOURIS of the teſtament, or latter will, ſould be ſic perſounis as the maker thairof dois nominat, and to quhom he committis that care and office; bot gif nane be nominat or choſin be him to that effect, his narreſt kinniſmen may deſire, and be confirmit executouris to him with conſent of the Biſchop. *Lib.* 2. *c.* 37.

C. II. Aith of executouris.

THE executouris, als weill teſtamentar as dative, aucht and ſould ſwear and mak faith the time of the confirmatioun of the teſtament, that thay ſall leillelie and trewlie execute and fulfill, efter thair powar, the reſſonabill will of the deid, and ſall give juſt compt and rekning of thair adminiſtratioun to all perſounis havand intereſſe thairto, quhen thay ſall be lauchfullie requirit to do the ſamin. 13 *Julij*, 1420, *in ſynodo generali apud Perth*, 2 *t. c.* 348.

C. III. Executouris may perſew for debtis auchtand to the deid. Bot thay ſould do the ſamin within zeir and day.

EXECUTOURIS hes juſt richt and titill to call and perſew for all debtis auchtand to the deid the time of his deceis, ſic as for actiounis of ſpuilzie, and utheris ſiclike; bot thay aucht and ſould do the ſamin within zeir and day, efter the deceis of him to quhom thay war executouris; and gif thay failzie, or neglect to do the ſamin, the air may call and perſew, as air, in all ſic actiounis. 1 *Mart.* 1556, 2 *t. c.* 266. 17 *Julij*, 1501, 1 *t. c.* 111.

C. IV. Executouris may not per-

ANE executour may not intromet with the gudis and geir of the deid

ſew bot be vertue of a confirmit teſtament.

deid, nor zit perſew as executour, untill the teſtament be firſt confirmit, 25 *Maij*, 1549. And albeit the teſtament be confirmit eſter the executioun of the ſummondis, the executour may nevertheles perſew as executour, be virtue of the ſaid ſummoundis, 16 *Jan.* 1532, 2 *t. c.* 208. Becauſe all movabill gudis and geir, and debt is auchtand be ony perſoun to the deid the time of his deceis, and conſiſtand in movabill gudis, ſic as ſowmis of money, pertenis to the executour, and not to the air. 7 *April.* 1538, 1 *t. c.* 1034.

C. V. Executouris may perſew for annuellis of benefices. With the fruitis thairof.

GIF ane eccleſiaſtical perſoun lauchfullie provydit to ony benefice, deceiſſis in poſſeſſioun thairof, conform to his proviſioun, his executouris may perſew befoir the eccleſiaſtical Judge, the intromettaris with the fruitis thairof, for the annuell thairof, 7 *Decemb.* 1501, *M.* Alexander Loch *contra* Johne Gordoun. 20 *Feb.* 1535, 1 *t. c.* 113. *Item*, The fruitis of the ſamin benefice beand ſeperate fra the ground, be ſcheiring, ſtouking or ſtakking thairof, the ſamin, eſter his deceis, aucht and ſould pertene to the executouris. 22 *Jan.* 1566, Gavine *Abbot of* Kilwyning *contra* Frier Johnſtoun, 1 *t. c.* 893.

C. VI. Executouris may not mak ane aſſignay to the deidis gudis.

EXECUTOURIS may not give, diſpone, or mak ony aſſignay to the gudis and geir of the deid, utherwayis than conform to the deidis latter will and teſtament, 20 *Septemb.* 1546. Bot the executour may mak the creditour aſſignay to ony part of the ſaidis gudis and geir, conform to the rate and quantitie of the gudis and geir aucht to him be the perſoun that is deceiſt. 7 *Mart.* 1557, Boyle *contra* Stewart, 2 *t. c.* 169.

C. VII. Ane executour may not be perſewit, without the reſt of his colligues.

GIF thair be divers and ſindrie executouris, ane of thame cannot be callit or perſewit without the reſt, except the reſt be deceiſt, and ane executour allanerlie livand; becauſe he is in place of all thame that ar deceiſt, 18 *Decemb.* 1557. 27 *Junij*, 1536. And ſiclike ane of thame may not perſew as executour without the remanent. 11 *April.* 1557, *The Erle of* Mortoun *contra the* Duke, 1 *t. c.* 952. Attour, Gif thair be divers and ſindrie executouris, and ane of thame, without conſent of the reſt, compone, tranſact, or give, quyte, renunce and diſcharge ony ſowme of money or debt auchtand to the deid the time of his deceis, the ſamin is null in the ſelf, and of nane avail. 9 *Decemb.* 1575, Johne Marjoribankis *contra the Laird of* Balfour, 2 *t. c.* 379.

C. VIII. The executour may be callit be the air for his releif.

GIF the air of ony perſoun that is deceiſt be callit for the deidis debtis auchtand be him the time of his deceis, he hes juſt actioun and titill to call the executouris that intromettit with the movabill gudis, to warrand and releive him thairanent, in ſa far as thay ar reſponſal *de bonis defuncti*, 26 *Junij*, 1542, Alexander Innes *of that ilk* contra Alexander Gadderer, 1 *t. c.* 551. And thairfoir, gif the air be perſewit for the ſaidis debtis, he ſould have ane day aſſignit to him to call the executouris for his releif. 21 *Mart.* 1561, *The Laird of* Elphingſtoun *contra the Lord* Glamis, 1 *t. c.* 1242.

C. IX. Executouris ſould pay all legacies.

THE executouris may be callit and perſewit be the legatoris, for pay-

payment of all legacies left to thame be the deid. *Pen. Julij*, 1541, 1 *t. c.* 1062.

C. X. Executouris may be firſt callit be him quha hes paid ony debt for the deid.

HE that is auchtand, or has paid in name and behalf of ony uther that is deceiſt, ony debt, or ſowmis of money, and is deſirous to have his releif thairof, aucht and ſould firſt call and perſew befoir the ſpiritual Judge his executouris, to frie and releive him of the ſaid ſowme or debt, at the handis of the creditouris, gif the principal debtour that is deceiſt had movabill gudis the time of his deceis: Bot gif thair was not ſufficient movabill gudis, the air of the principal debtour deceiſt may be callit and perſewit befoir the temporal Judge, for the effect foirſaid; becauſe in all ſic caiſis the movabill gudis intromettit with be the executouris aucht and ſould be firſt diſcuſt, befoir ony gudis, geir, or landis pertening to the air. 19 *Jan.* 1487, Thomas Sempill *contra* F. Fordell, 1 *t. c.* 52.

C. XI. Executour may not be callit, quha hes maid juſt compt and rekning.

COMPT and reknyng beand juſtlie and lauchfullie maid be the executour, of his intromiſſioun with the gudis and geir pertening to the deid, he on na wayis thairefter may be callit as executour for ony debt auchtand be the deid. 27 *Jan.* 1507, Margaret Symſon *contra* James Scot, 1 *t. c.* 266.

C. XII. Executouris may not be callit to warrand landis or immovabill gudis.

THE executouris may not be callit nor decernit to warrand ony heritabill infeftment or diſpoſitioun maid be the deid befoir his deceis. 5 *Junij*, 1567, *Priour of* Pluſcardin *contra the Schiref of* Murray, 2 t. *c.* 327.

C. XIII. Ane executour may renunce his office.

ANE executour may renunce the office of executorie in preſence of ane Judge, except he, as executour, hes intromettit with ony gudis or geir pertening to the deid; for in that cais he may not renunce; becauſe *res non eſt integra.* 28 *Junij*, 1561, Marion Leirmonth *contra* George Home, 7 *Mart.* 1569. Alexander Murray's *Renunciatioun*, 1 *t. c.* 1236.

C. XIV. Gif ane executour renuncis or deceiſſis, the haill is divolvit in his colligue.

GIF thair be twa or ma executouris to ane perſoun that is deceiſt, and ony of thame lauchfullie refuſis the office of executorie, or zit acceptis the ſamin, and thairefter happinis to deceis, the haill office of executorie aucht and ſould pertene to the uther, as executour *in ſolidum*, and na part thairof to the executour of the executour that is deceiſt, 14 *Mar.* 1548, *Sir* Stephane Culros *contra* John Balvaird: And thairfoir the executour that is livand may be callit, without the air or executour of him that is deceiſt. 26 *Feb.* 1567, *The Lady* Lovat *contra* William *and* Hew Fraſeris, 2 *t. c.* 205.

C. XV.

OF undoing of caupis in *Galloway* and *Carrict*. *Ja.* IV. *fol.* 84. *act.* 35, & 36. 15 *Feb.* 1489.

Anent airis and ſucceſſouris.

C. I. Diviſioun of airis.

SUM airis and ſucceſſouris ar of immediat and narreſt degré, and ſum utheris ar of mediat and farder degré. Immediat airis ar, the

the ſone and the dochter; quhilkis failzeand, thay that ar of a farder degré, and mair diſtant, ſould be airis, as the Nepuoy or Neipce, gottin or born of the ſone or dochter; and eſter thame, utheris of the richt line deſcendand conſequentlie *in infinitum*. *Item*, Sum mediat airis may cum be way of the ſide line, as the brother, the ſiſter, and thair bairnis; or the fatheris brother, the fatheris ſiſter, the motheris ſiſter, and utheris deſcendand from thame. *Lib.* 2. *c.* 28. *De jud. c.* 114.

C. II. Of airis in the richt line deſcendand, and 1. of ane ſone.

ALL and ſindrie perſounis beand of the richt line deſcendand, ſould be preferrit in ſucceſſioun to all thame that cumis of the ſide line, *Lib.* 2. *c.* 33. And thairfoir, gif ony man havand landis and heritage deceiſſis, leivand behind him ane ſone allanerlie, the ſone ſall ſucceid to all and haill his fatheris landis, *Lib.* 2. *c.* 29. *De jud. c.* 115. quhidder the ſaidis landis be haldin be ſervice of ward and releif, or utherwayis, *Lib.* 2. *c.* 30. Gif ony man havand divers ſonis deceiſſis, be the law of this realme the eldeſt ſone ſould ſucceid to all and haill his fatheris landis. *Lib.* 2. *c.* 30.

C. III. Of ane ſone and dochter.

GIF ane man hes ane ſone, togidder with dochteris, ane or ma, the ſone allanerlie ſould be air, and excludis the dochteris, *Lib. c.* 23. *De jud. c.* 24. (2.) Gif ane burges havand ony landis within burgh, pertenand to him, and not annalzeit nor diſponit be him to ony man befoir his deceis, hes ane ſone or ane dochter; the ſone, and failzeand of him, the dochter, ſall ſucceid to all and haill the ſaidis landis quhilkis pertenit to the father the time of his deceis: Bot the lauchful wife of him that is deceiſt, als lang as ſcho remanis widow, ſall have the inner part of the houſe that is callit the flet, and the air the uther part of the heid houſe, gif he will dwell in it; and that gif the wife hes nane uther dowrie; for gif ſcho hes ony uther dowrie, ſcho ſall joiſe the ſamin, and the air ſall have all and haill the heid houſe, *Leg. burg. c.* 25. (3.) Gif ony man have divers lauchful wives, and hes begotten ane or ma dochteris with ſum of thame, and with his lait wife ane ſone, the ſaid ſone allanerlie ſould be air to his father, *Leg. Foreſt. c.* 27. *De jud. c.* 24. Becauſe ane lauchful ſone, gottin of ony lauchful wife, ather of the firſt, ſecund, or thrid wife, ſucceidis as air to his father, and excludis all his ſiſteris thairfra, *De jud. c.* 119. (4.) Gif ony man maries ane wife, and infeftis hir in conjunct-fie of his landis or tenementis, and the airis gottin or to be gottin betwix thame, and ſcho thairefter deceiſſis, leivand lauchful ſucceſſioun of hir bodie, dochteris ane or ma, eſter quhais deceis he maries ane ſecund wife, and be reſignatioun, or utherwayis gevis hir conjunct-infeftment, with ſaſine followand thairupon, of all and haill the ſaidis landis, or of ony part thairof, and to the airs maill lauchfullie gottin, or to be gottin betwix thame; quhilkis failzeing, to the airis and aſſignayis quhatſumever; and ſcho thairefter deceiſſis, leivand behind hir na lauchful ſucceſſioun of hir bodie; and the ſaid husband maryis the thrid wife, and begets with her dochteris allanerlie; and thairefter he deceiſis leivand na airis maill lauchfullie gottin of his bodie with his ſecund or thrid wife; the dochteris gottin with the thrid wife aucht and ſould ſucceid as airis to thair father, with the dochteris gottin with the firſt wife, ilk ane *pro rata et in capita*, in thay land-

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is in the quhilk thair father deceiſt veſt and ſaiſit, be reſſoun of the conjunct-infeftment maid to himſelf, and his ſecund wife abone expremit; for the airis gottin with the firſt, may not clame to be airis allanerlie to all and haill the ſaidis landis, be vertue of the firſt infeftment gevin to thair mother, as ſaid is; becauſe, efter hir deceis, thair father gevand the conjunct-infeftment to his ſecund wife, alterit and changit the firſt infeftment, and allutterlie denudit the bairnis gottin with the firſt wife, thairof, as gif the firſt ſaſine thairof had never bene gevin to hir, ſiclike as he micht have ſauld, annalzeit or diſponit the ſamin at his pleaſour, be reſſoun the haill fie and lordſchip of all and haill the ſaidis landis was devolvit and conſolidat in his perſoun, efter the deceis of his firſt wife, and ſwa, efter hir deceis, micht have frelie ſauld the ſamin to ony man, or gevin conjunct-infeftment to the ſecund wife in ony maner he pleaſit. 20 *Decemb.* 1550, Marion, Margaret, *and* Jonet Aikmanis, *contra* Elizabeth Aikman, 1 *t. c.* 724.

C. IV. Of dochteris, ane or ma.

GIF ony man deceis, leivand behind him ane dochter, ſcho ſould ſucceid to him as air to all and haill his heritage, quhidder he that is deceiſt be ane burges or not, *De jud. c.* 115. *Leg. burg. c.* 25.

GIF ony man deceis, leivand behind him twa or ma dochteris, albeit he was burges, or ony uther freman, or zit held his landis be ward and releif, or utherwayis, his landis and heritage ſould be equallie dividit amang his dochteris, reſervand the cheif meſſuage to the eldeſt dochter, to remane with hir, ſcho makand ſatisfactioun to the valour thairof, in ony uther gudis or geir to the reſt of the dochteris, *Lib.* 2. *c.* 31. *De jud. c.* 115.

GIF ony man have divers wives, and with ilk ane of thame ane dochter or dochteris, all and ſindrie the dochteris ſall ſucceid to him as airis, like as thay had bene all born of ane woman. *Lib.* 2. *c.* 33. The quhilk rule of ſucceſſioun ſould be underſtuid of the heritage that movis and cumis to the dochteris be reſſoun and in reſpect of thair father. *De jud. c.* 24.

GIF ony man have divers and ſindrie wives, and with ilk ane of thame ane dochter or ma, gif the landis and heritage quhilk he leivis behind him, movis and cumis be reſſoun of ony ane of his wives, the dochter or dochteris gottin with the ſaid wife allanerlie, ſall ſucceid thairto, and exclude thairfra the remanent dochteris gottin with the uther wife or wives. *De jud. c.* 24. *Leg. Foreſt. c.* 27.

GIF ane burges, havand ma landis and tenementis nor ane, hes ſindrie bairnis with ſindrie wives, all the landis, als weill the heritage as the conqueiſt, quhilkis war purcheſt in the time of the firſt wife, and pertenit to him the time of hir deceis, aucht and ſould pertene to the air gottin betwix him and the firſt wife: And ſiclike is to be underſtuid of the the landis conqueiſt in the ſecund wife's time, except the ſamin landis wer gevin and diſponit be him to ony uther befoir the time of hir deceis: And as to the ſecund wife, ſcho ſall not remane in the houſe of the firſt air, efter hir huſbandis deceis, bot be the ſpace of fourtie dayis. *Leg. burg. c.* 26.

C. V. Of nepuoyis and neipces.

QUHEN ony man deceiſſis without ſone or dochter, havand allanerlie nepuoy or neipce, ane or ma, quhilk is cum and deſcendit fra his ſone or his dochter, the ſaid nepuoy or neipce ſall ſucceid to him

him in the ſamin maner, form and diſtinctiounis as is abone declarit anent the ſucceſſioun of ſonis and dochteris; and excludis the deidis brether and ſiſteris, and all uther perſounis of the ſide line; for ſwa lang as thair is ony of the richt line deſcendand, thay that cumis of the ſide line may clame na richt nor titill of ſucceſſioun. *Lib.* 2. *c.* 33. *De jud. c.* 119.

GIF ony man deceiſſis leivand behind him ane nepvoy of his eldeſt ſone alreadie deceiſt, togidder with ane ſecund or efter-born ſone zit on life, the nepvoy, *jure repræſentationis*, ſould ſucceid to his gudſchir that is deceiſt, and not his efter-born ſone; becauſe, ſeing that the nepvoy is cum of the eldeſt ſone, as lauchful air gottin of his bodie, all richt and titill of ſucceſſioun pertenis to him quhilk micht have pertenit to his father, gif he war zit on life. *De jud. c.* 119. *Lib.* 2. *c.* 33. And mairover, gif the eldeſt ſone, befoir his deceis, maid homage for his fatheris heritage to the over-lord thairof, albeit he happinit to deceis befoir his father, his ſone, *viz.* the nepvoy, ſould be preferrit to his fatheris brother in the ſucceſſioun to his gudſchir's heritage. *Lib.* 2. *c.* 33.

C. VI. Of airis of the ſide line.

GIF the airis of the richt line deſcendand happin to failzie, the airis cumand of the ſide line ſould ſucceid, and firſt the deidis brother or brether; and gif thair be na brother, his ſiſteris ſould ſucceid; and failzeing of thame baith, thair airis ſould ſucceid; and failzeing of thame, the father brother, or the mother brother, or thair bairnis; and ſwa furth conſequentlie, alwayis keipand and obſervand the diſtinctioun and difference betwix the male and female. *Lib.* 2. *c.* 34. *Leg. Foreſt. c.* 27.

C. VII: Succeſſioun of brether.

GIF ony man have thré, four, or ma ſonis, lauchfullie born of ane mother, and gevis to ane of thame, *viz.* to his ſecund ſone, ane reſſonabill part, to remane with him heritablie, with conſent of his air and eldeſt ſone, for ſtopping of ſtrife and contentioun betwix thame thairanent; and the ſecund ſone being in poſſeſſioun and ſaſine of the landis, and taking up the proffeitis and dewteis thairof, during his lifetime, happinis to deceis without airis of his bodie, his father, and the reſt of his brether being on life; in this cais the father may not ſucceid to the ſone that is deceiſt in the ſaidis landis, notwithſtanding he gave the ſamin to his ſone befoir his deceis, bot the ſamin ſould pertene to his eldeſt ſone, *Lib.* 2. *c.* 24. Becauſe it is generallie to be kept for ane rewl, quhen landis ar gevin heritablie be the father, or be ony uther perſoun, to the ſecund, thrid, or ony uther ſone, and it happinis the ſone, to quhom it is gevin, to deceis, without airis of his bodie, his immediat eldar brother allanerlie, gif ony be, ſould ſucceid thairto. *De jud. c.* 113. And thairfoir, gif ony perſoun havand twa brether-german of ane father and ane mother, eldar nor himſelf, conqueiſſis ony landis to him and his airis, and thairefter deceiſſis, leivand na lauchful airis of his body behind him, his immediat eldar brother, and his airis, ſould ſucceid to all and haill his conqueiſt landis; and thairefter the ſamin ſould pertene to his airis in the richt line deſcendand; ſwa that the ſamin, ſwa lang as he hes ony ſic airis, on na wayis may cum to the eldeſt brother and his airis; becauſe all conqueſt ſould aſcend anes, and thairefter may na mair aſcend; bot ſould deſcend as heritage:

tage: And the like is underſtuid of him quha conqueiſſis land to him and his airis, and deceiſſis thairefter without ſucceſſioun of his body, leivand behind him allanerlie twa father brether, or bairnis gottin of thair bodies. *Ro.* III. *c.* 3. 19 *Julij*, 1550. 17 *Jan.* 1550, David Kneland *contra* Chriſtian Kneland, 1 *t. c.* 696.

ITEM, Ane man deceiſſand without bairnis of his bodie, leivand twa brether zounger behind him, the elder of his twa brether ſucceidis as air to him in his movabill gudis, geir, and heritage, and ſecludis the uther brother fra all ſucceſſioun thairto. 19 *Nov.* 1561, *Advocate and* John Wod *contra* Walter Wod, 1 *t. c.* 1203.

ITEM, Gif ony perſoun deceiſſis, leivand landis conqueiſt be him in his lifetime, havand twa brether, of the quhilk the ane is elder, and the uther zounger than he, the eldeſt brother ſould ſucceid to him as air in all and haill the ſaidis landis, *quia conquæſtus ſemel aſcendit*; and the zounger brother ſall have all and haill the ſaid movabill airſchip gudis. 22 *Mart.* 1551, Robert Coutis *of* Auchtertule, *contra* Thomas Forbes, 1 *t. c.* 713. *Lib.* 4. *t.* 50. *De jud. c.* 106. 113. *Leg. burg. c.* 150.

ITEM, Gif thair be twa or ma brether, and the eldeſt brother, havand ane or twa ſonis, gevis to his ſecund or zounger brother ony landis heritablie, and it happin him to quhom the ſamin was gevin to mak homage thairfoir in his lifetime, and thairefter to deceis, havand lauchful airis of his bodie, or ony uther lauchful air of farder degré, ſic as the brother ſone, or uther air, (*heredem remotiorem*) the ſaidis landis ſall never return to him that gave the ſamin, nor to his airis, bot ſould pertene to the airis of the donatour that is deceiſt; for in reſpect of thame, ſic landis ar underſtuid to have the nature of heritage, and thairfoir ſould deſcend heritablie, and may never aſcend in ony time efterwart, *Lib.* 2. *c.* 24, 25. Bot gif the brother to quhom the landis wer gevin deceiſſis, without lauchful airis gottin of his bodie; nevertheles the ſamin landis ſall never return to the eldeſt brother that gave the ſamin, bot ſall be gevin and deliverit to his eldeſt ſone, gif he hes na uther ſie nor landis for his ſuſtentatioun, to remane with him quhill his fatheris heritage be deliverit to him: And gif ony man wald object and alledge that the firſt gottin ſone may not be baith air and lord or proprietar of the ſaidis landis, it may be anſwerit, that ſwa lang as his father lives, it is uncertane gif he ſall be air or not; for it is not man but God allanerlie that makis airis; for gif the ſone happinis to deceis befoir his father, then it was certane that he was never his fatheris air; and gif his father happin to deceis befoir him, then it is certane that he may be his fatheris air, and thairfoir he may not bruik and joiſe the ſaidis landis quhilkis he gat be ſucceſſioun to his father brother, bot ſould deliver the ſamin to his awin zounger brother. *Lib.* 2. *c.* 24, 25. *De jud. c.* 113.

C. VIII. Of ſiſteris.

ITEM, In ſic caiſis as ſiſteris ſould ſucceid, gif thair be twa or ma ſiſteris, thay ſould all ſucceid togidder, ilk ane for thair awin part, in the ſamin maner as is abone expremit anent the ſucceſſioun of dochteris: And gif ony of thame deceiſſis, not havand ane lauchful air gottin of hir bodie, hir part and portioun of the heritage, quhilk pertenis to hir the time of hir deceis, ſould be equallie

dividit amang the reſt of hir ſiſteris that ar livand. *Lib.* 2. *c.* 31. *Leg. burg. c.* 150. *Stat. Will. c.* 14. *De jud. c.* 116.

C. IX. The full ſiſter excludis the half ſiſter.

GIF ony man havand landis and tenementis begettis with his lauchful wife dochteris ane or ma, and, efter the deceis of that wife, maryis ane uther, and begettis with hir ane ſone and ane dochter; efter his deceis, his ſone allanerlie enteris air, and obtenis ſaſine of his fatheris landis: Gif it happinis the ſone to deceis without lauchful airis of his bodie gottin, the landis quhairin he deceiſt laſt veſt and ſaiſit ſould not be dividit amang all and haill the ſaidis ſiſteris; becauſe ſcho that is full ſiſter to him that is deceiſt, of the ſamin father and mother with him, ſould ſucceid to all and haill the ſaidis landis be reſſoun of hir brother; and the remanent ſiſteris, of the fatheris ſide allanerlie, may clame na part nor portioun thairof, be reſſoun of thair father, *Lib.* 4. *c.* 48. Becauſe ſcho that is full ſiſter to him that is deceiſt, may rais ane breif, and clame the heritage as air to hir brother, quha deceiſt veſt and ſaiſit in the ſamin, and not as air to hir father. *De jud. c.* 106.

C X. The ſecund diviſioun of airis.

SUM airis ar certanlie knawin to be minoris, and of les age, and ſum ar certanlie knawin to be majoris, and of perfeit age, and ſum ar uncertane quhidder thay be minoris or majoris, *De jud. c.* 121. Gif it be uncertane quhidder thay be of les age, or of perfeit age, the over-lord may hald and retene the heritage in his handis until the air prove himſelf to be of perfeit and lauchful age. *Lib.* 2. *c.* 44.

C. XI. Of airis that ar minoris, and of thair entrie.

THE air of ward landis that is certanelie knawin to be minor and of les age, is and ſould remane in the keiping and ward of the over-lord, untill he be of lauchful age, *Lib.* 2. *c.* 39. And he beand major, and cum to perfeit age, may enter to his landis, and ſeik reſtitutioun thairof, and ſould be fré from payment of ony releif thairfoir to his ſuperiour; becauſe ane air that hes bene in his ſuperiouris ward and keiping, may not be compellit to pay ony releif; for the ward ſould mak him ſaif and fré of the releif. *De jud. c.* 65.

ITEM, Gif ony air was minor the time of his predeceſſouris deceis, and thairfoir he and his landis happinis to be in the ſuperiouris handis be reſſoun of ward; and gif the ſuperiour will not, without he be compellit be ane Judge, reſtoir and deliver the heritage to the air, beand of lauchful and perfeit age, the air, be ane breif and aſſiſe of mortanceſtrie, will recover his landis and heritage fra his over-lord, with all damnage and ſkaith ſuſtenit be him be reſſoun of the ſaid detentioun, and with-halding of his heritage, ſen the time that he was major, and of lauchful age, togidder with the violent proffeitis thairof, the quhilkis, in this cais, may be clamit and aſkit be the air in his proces of the breif of mortanceſtrie, like as it wer in the actioun and caus of ejectioun and ſpuilzie. *Leg. Foreſt. c.* 72.

C. XII. Of airis that ar majoris, and of thair entrie.

THE air that is certanelie knawin and underſtuid to be major, and of perfeit age, may, incontinent efter his predeceſſouris deceis, enter air, and intromet with his landis and heritage; for ſuppois the over-lord, befoir the entrie of the air, may recognoſce the heritage in

in his awin handis be reſſoun of the non-entres of the air, nevertheles he ſould do the ſamin according to the law and equitie, and ſould not ſpuilzie nor eject the air thairfra; the quhilk gif he dois, it is leaſum to the air, beand male, and knawin to be of perfeit age, to reſiſt to his violence and iniquitie, and to defend and mantene himſelf in poſſeſſioun of his awin heritage, contrare his over-lordis will; ſwa that he be readie to pay and to do him his homage, releif, and uther ſervice uſit and wont thairfoir, and offer the ſamin to him befoir honeſt and ſufficient witneſſis. *Lib.* 2. *c.* 71. *De jud. c.* 136.

ITEM, Gif ane air was certanlie knawin to be major, and of perfeit age the time of his predeceſſouris deceis, and thairfoir is in poſſeſſioun and ſaſine of his heritage, his ſuperiour may not eject and put him thairfra, nor tak ony thing thairof be reſſoun of his ſuperioritie: And mairover, gif the ſuperiour malicioufflie ſtoppis the ſaid air to enter, and to tak ſaſine and poſſeſſioun of his heritage, and thairthrow compellis him to rais and intent the breif and proces of mortanceſtrie, the ſaid ſuperiour ſall content and pay to the ſaid air his coiſtis and ſkaithis, togidder with the violent proffeitis, as gif he war perſewit in ane actioun of ejectioun and ſpuilzie, *Leg. Foreſt. c.* 72. Bot it is to wit, concerning landis and heritage that ar haldin of the King in cheif, and fallin in his handis be reſſoun of ward, ſerjandrie, or patronage, that the King may bruik and poſſes the ſamin landis, and that the airis, nor na uther perſounis, may intromet thairwith, or tak poſſeſſioun of the ſamin, untill thay have recoverit thame lauchfullie out of the Kingis handis. *Leg. Foreſt. c.* 72.

Wardis, ſerjandrie, patronage.

THE firſt age is of ſevin zeiris, during the quhilk the bairn is in powar and keiping of his father and mother. The ſecund age, in males, is unto the age of xiiij. zeiris, and in females unto the age of xij. zeiris; efter the quhilk time it is leaſum to contract mariage. The thrid age is unto the time that ane air may enter to his landis, quhilk is divers be reſſoun of divers kindis of airis, *Leg. Foreſt. c.* 15. For ane air male of ward landis is of perfeit age to enter to his landis, quhen he is of xxi. zeiris compleit. *Lib.* 2. *c.* 39. *De jud. c.* 65, *&* 121.

C. XIII. Divers kindis of ages, and of perfeit age of airis.

ANE heretrix, or air female, of ward landis, is of perfeit age quhen ſcho is xiiij. zeir auld compleit. *Lib.* 2. *c.* 39. *De jud. c.* 26, *&* 65. Ane burges air is of lauchful age, quhen he is xiiij. zeiris compleit, or quhen he can perfectlie tell and nombre ſilver, and knaw the evil money by the gude, and juſtlie met and meaſour claith, and diſcretelie do his fatheris buſines. *Lib.* 2. *c.* 40.

ANE air maill of ward landis may not enter to the ſaidis landis, untill he be of xxi. zeiris compleit; zit nevertheles the King may diſpenſe with his les age and minoritie, and he, be vertue of the ſaid diſpenſatioun, may enter thairto befoir the time of his perfeit age, 18 *Maij*, 1553, Diſchingtoun *contra* Diſchingtoun. Bot ane air mail or female may enter to his blanch landis at ony time, without ony diſpenſatioun, quhen he pleaſis, quhidder he be of les age, or perfeit, 18 *Maij*, 1553. And nevertheles he is not of perfeit age to ſell, annalzie or put away his landis, untill he be of xxi. zeiris

zeiris compleit. 16 *Mart.* 1548, John Steill *contra* John Hamiltoun.

C. XIV. Diſpenſatioun gevin to ane air to enter befoir his perfeit age.

THE King, for ſingular favour quhilk he bearis to ony of his liegis being minor, or for ony uther cauſe moving his Hienes, may diſpens with him anent his age, ſwa that thairby he may obtene entres to his landis, and be ſervit be breifis and retourit, as gif he war major, and of lauchful age; and to that effect his Grace may direct his letteris under his privie ſeill, chargeand ſtraitlie, and commandand the Schiref and his deputis, or ony uther Judge befoir quhom the ſaidis breifis ſould be ſervit, that gif the ſaid minor, or his actornay, preſentis ony breifis, that thay reſſave the ſamin, and cauſe thame be dewlie ſervit, but ony ſtop or delay, and retour agane to the chancellarie as effeiris; the quhilk diſpenſatioun, gevin as ſaid is, aucht and ſould on na wayis be hurtful or prejudicial to ony perſoun havand the ſaid minoris ward and mariage gevin to him be the King, or ony uther wayis. 15 *Mart.* 1504, *The King contra* Alexander Ramſay *of* Dalhouſſie, 1 *t. c.* 219.

C. XV. Remeid aganis airis not entrand in defraud of thair creditouris.

THE creditour may perſew him quha is chargit to enter within fourtie dayis, and enteris not, *Ja.* V. *fol.* 138. *act.* 68. 14 *Mart.* 1540. And ane air, albeit he be minor, and within age, may be chargit, with his tutoris and curatoris, to enter within fourtie dayis, according to the act of parliament. 19 *Mart.* 1551, 1 *t. c.* 1197.

C. XVI. Of ane air of ward landis, not enterand eſter the iſche of the ward.

GIF ony heritour of landis haldin be ſervice of ward and releif, eſter the time that the landis wer in the ſuperiouris handis, be reſſoun of ward, be bypaſt and run out, enteris not lauchfullie to the ſaidis landis, the proffeitis and dewteis of the landis pertenis to the ſuperiour, be reſſoun of the non-entres of the ſaid air, albeit he be now of perfeit age, ay and quhill his lauchful entrie thairto. 18 *Feb.* 1495, *The King* contra *Erle of* Craufurd, 1 *t. c.* 89.

C. XVII. Of ane air chargit to enter, and renunceand to be air.

GIF ony perſoun be chargit to enter air to his father or predeceſſour, at his creditouris inſtance, within the ſpace of fourtie dayis, with certificatioun, that gif he enter not, ſic proces ſall be led and deducit aganis him, as micht or ſould have bene led aganis his predeceſſour, gif he, eſter the iſche of fourtie dayis, alledge that he had renuncit, and preſentlie renuncis, to be air to his father or predeceſſour, he ſould not at that time be heard to renunce, gif the perſewar offeris him to preive that he had done exact diligence, and had raiſit letteris chargeand him to enter within the time, and in maner abone expremit, and that he failzeit to do the ſamin; becauſe the ſaid air ſould have raiſit letteris within the ſaid fourtie dayis aganis the perſewar, charging him to compeir, and heir and ſe him renunce to be air. 19 *Mart.* 1551, Robert Coutis *now of* Auchtertule, *contra* Thomas Forbes, 1 *t. c.* 707.

C. XVIII. It is not ſumtimes leaſum to ane air to renunce.

GIF ony perſoun, as air to his predeceſſour, hes contractit and maid appointment with ony uther, or zit, as air foirſaid, hes ratifyit and approvin ony thing done be his predeceſſour, he may not thaireſter renunce or refuſe to be air to his ſaid predeceſſour. 3 *Decemb.* 1569, Lumiſden *contra* Wod *of* Multreis, 1 *t. c.* 1359.

GIF

C. XIX. The pupill may renunce, notwithſtanding ony thing done be his tutoris.

GIF ony tutor raiſis brevis, and cauſis the pupill be ſervit as air to his predeceſſour, or perſewis in judgment ony actioun in the pupillis name, as air, nevertheles the pupill thairefter may refuſe and renunce to be air. 14 *Maij*, 1562, Reidheuch *contra* Reidheuch, 2 *t. c.* 284.

C. XX.

THE over-lord not enterand to the ſuperioritie, tynis the ſamin, and ſatisfyis the partie. *Ja.* III. *fol.* 59. *act.* 71. 9 *Maij*, 1474.

C. XXI. Of a ſuperiour not enterand nor reſſavand his tenent.

GIF ony man be decernit to enter and reſſave his tenent in his landis within ane certane ſpace of zeiris or time, and zit nevertheles refuſis, poſtponis, and differis to do the ſamin, he aucht and ſould content and pay to his tenent the uſit and wont maillis, proffeitis, and dewteis of the ſaidis landis, of all zeiris and termis ſen the time that he was lauchfullie requirit to enter, quhilk the tenent wantit in the ſaid ſuperiouris default. 29 *Julij*, 1502, Hector Bruce *of* Colpmalundie *contra the Lord* Lindſay, 1 *t. c.* 128. 20 *Junij*, 1542, Niniane Bannatyne *contra the Laird of* Corſbee, 2 *t. c.* 107.

C. XXII. Of a ſuperiour havand juſt impediment to enter to his landis, being chargit thairto.

GIF ony ſuperiour be chargit to enter to his landis, to the effect that the tenent or vaſſall may enter to his tenandrie thairof, and the ſeiknes of the peſtilence, or ony uther contagious maladie, or ſic-like juſt impediment be in the town or place, quhair his brevis ſould be ſervit; gif he dois diligence to rais breivis, and is ſtoppit, throw the impediment of the ſaid ſeiknes, the ſamin impediment is lauchful, and keipis and ſavis him fra all damnage and ſkaith that he micht incur throw not entering to his landis. 27 *Jan.* 1499, William Fleming *of* Bord *contra* John *Lord* Fleming, 1 *t. c.* 178.

ITEM, Landis being in the ſuperiouris handis be reſſoun of ward, and the air thairof being of les age, gif he be chargit be ony of his tenentis or vaſſallis to enter within xl. dayis to the ſuperioritie of the ſaidis landis, albeit he enter not, he ſould not be decernit to have tint the ſuperioritie thairof for his lifetime; becauſe he is of les age, and thairfoir may not enter, 18 *Decemb.* 1540, Adame Nisbet *contra* Helene Sinclare, 1 *t. c.* 515. *Item*, Ane air being chargit to enter to his landis be ane tenent, vaſſall, or ony uther perſoun, havand ane pley or actioun aganis him as air, may not be compellit to enter thairto, gif his mother, or ony uther perſoun, be in conjunct-fie thairof, except ſcho renunce hir fie, and tak hir to hir liferent. 10 *Mart.* 1542, Johne Cochrane *contra* James Matthieſone, 1 *t. c.* 578.

C. XXIII. Of a ſuperiour chargit to enter his tenent, and deceiſſand before he do the ſamin.

GIF ony perſoun being ſervit be ane breif of inqueiſt, narreſt and lauchful air to ony landis, rais and obtene ony precept or preceptis furth of the chancellarie, charging his ſuperiour to enter him to the ſaidis landis, conform to his ſervice, and in the mean time the ſuperiour happin to deceis, the precept and charge not beand obeyit, his air and ſucceſſour ſall enter the ſaid tenent be virtue of the ſaid precept or charge, like as the ſuperiour, gif he had lived, aucht and ſould have done. 20 *Maij*, 1533, David Hair *contra* Alexander Auchterlony, 1 *t. c.* 420.

C. XXIV. Of ane ſuperiour abſent

GIF ony perſoun, havand privilege of regalitie, be priſoner, or uther-

and furth of the realme.

utherwayis abſent in ane uther realme, quhairthrow his tenent or vaſſall, haldand landis of him in cheif, may not get entres to the ſaidis landis, and thairthrow is compellit to tyne the maillis and dewteis thairof; the ſaid tenent may ask and obtene letteris of the Lordis, charging the ſaid ſuperiour, be opin proclamatioun, upon lx. dayis warning, to direct brevis of his regalitie for entering of the ſaid tenent, with certificatioun and he failzie thairintill, the Lordis will cauſe him be enterit be brevis of our ſoverane Lordis chapell: And gif the ſuperiour failzeis to direct brevis of his regalitie, or to compeir and ſchew ane reſſonabill cauſe quhy he ſould not do the ſamin, the Lordis may ordane the ſaid tenent to be enterit efter the ordour of our ſoverane Lordis chancellarie, be brevis to be direct furth of the ſamin to that effect, and the ſamin to be als ſufficient and lauchful as the ſaidis brevis of regalitie. 29 *Maij*, 1549, Alexander Kneland *contra* James *Erle of* Mortoun, 1 *t. c.* 681.

C. XXV. Of the tenent enterit be the eldeſt ſiſter firſt.

GIF thair be divers ſiſteris, or airis female of ony landis, the tenent or vaſſal enterit be the eldeſt air ſould pay to hir allanerlie the releif and ſaſine ox: And gif the ſaidis landis wer in non-entres befoir his entrie, be ony term or ſpace, the non-entres and profſeitis thairof pertenis to hir in like maner, and not to the remanent airis female. *Ult. Junij*, 1536, 1 *t. c.* 1027.

C. XXVI. For quhat thingis ane air may be callit and perſewit.

THE air is bund and obliſt to fulfill and keip his fatheris or predeceſſouris teſtament, and to pay all his debtis, *Lib.* 2. *c.* 35. And gif the deid's gudis be not ſufficient for payment thairof, the air ſould of his awin proper gudis and geir pay the ſamin, gif he is ſervit and enterit air to him, *Lib.* 2. *c.* 37. *Item*, The air is haldin to warrand, as accordis of the law, all and ſindrie alienatiounis maid be his predeceſſour to him and his airis to quhom the ſamin wer maid. *Lib.* 2. *c.* 27.

C. XXVII. *Heres tenetur ſolvere debita defuncti.*

GIF ony perſoun deceiſſis, leivand behind him ane executour and ane air, and at the time of his deceis was auchtand ony ſowme of money, or debt, to the ſaid perſoun that was left executour, and the ſaid executour intromet with the movabill gudis and geir quhilk pertenit to the ſaid deid, he may not call nor perſew the ſaid air for the debt auchtand to him be the deid, gif the gudis and geir intromettit with be him extendis to the avail and quantitie of the ſaid debt; becauſe he, as executour and intromettour, aucht to releive the air of all debtis, *in quantum bona mobilia ſuppetunt*, and thairfoir, *quem de evictione tenet actio, eundem agentem repellit exceptio*: Bot gif it be found be ane juſt inventare, or utherwayis, that the gudis intromettit with be the ſaid executour extendis not to the avail and quantitie of the ſaid debt auchtand to him be the ſaid deid, the air ſould be compellit to content and pay to him the ſamin. *Ult. Maij*, 1564. 4 *Julij*, 1564, John Craig *contra* Pat. Oſburne, 1 *t. c.* 824.

C. XXVIII.

THE heritouris and airis may be followit at the zeiris end, efter the deceis of thair forebearis; and cautioun ſould be fund be the executouris to the air. *Ja.* IV. *fol.* 105. *act.* 111. 11 *Mart.* 1503.

GIF

C. XXIX. Ane air quha hes intromettit with ony airſchip, may be callit as air.

GIF ony perſoun is callit and perſewit as air to ane uther, for ony cauſe, obligatioun or debt auchtand be him to quhom he is air, albeit he be not enterit as air to him of ony landis or immovabill gudis; nevertheles gif he hes takin or reſſavit airſchip of ony movabill gudis pertening to his predeceſſour the time of his deceis, he, as air foirſaid, aucht and ſould anſwer conform to the avail and quantitie of that quhilk he has reſſavit. 14 *Novemb.* 1486, Jonet Setoun *contra* Margaret Dumbar, 1 *t. c.* 39.

C. XXX. Ane air may call and perſew be virtue of ane obligatioun maid to his predeceſſour.

GIF ony man be obliſt to infeft ony perſoun and his airis in ony landis within a certane day, and differis and delayis to do the ſamin be the ſpace of divers zeiris and termis, and it happinis him to quhom the ſaid obligatioun was maid to deceis in the mean time, na infeftment beand maid or gevin to him in his lifetime; his air hes gude actioun to call and perſew not onlie for the making of the ſaid infeftment, bot alſo for the proffeitis quhilk his predeceſſour and himſelf wantit, throw the non-obtening thairof; and the executouris of him to quhom the infeftment ſould have bene maid, hes na actioun nor titill thairto. 23 *Mart.* 1526, William Sutherland *contra* Andro Oliphant, 1 *t. c.* 287.

C. XXXI. Quha may have ane air.

BE the lawis of this realme, na perſoun may have ane air, except he be Prelat, Baron, burges, or frehalder. 15 *Mart.* 1540, Jonet Scot *contra N.* Blair, 1 *t. c.* 41.

C. XXXII. Air be reſignatioun.

GIF ony perſoun makis reſignatioun of ony landis or tenementis in his ſuperiouris handis, in favouris of his richteous and appeirand air, reſervand the frank-tenement thairof to himſelf; the perſoun in quhais favour the ſamin reſignatioun was maid ſucceidand to the ſaidis landis or tenementis, efter the deceis of the reſignant, be virtue of the reſignatioun, is underſtuid to ſucceid to him as air. 14 *Decemb.* 1503, 1 *t. c.* 205.

C. XXXIII. The ſone put in fie of the landis, is air to his father.

THE ſone beand put in fie of the landis, or ony part thairof, be his father, with reſervatioun of the liferent of the ſamin to the father, may be callit and perſewit, efter his fatheris deceis, as air to him, for all debtis auchtand be his father the time of his deceis, and contractit befoir the ſaid fie and infeftment. *Ult. Jan.* 1547, Geo. Hay *contra N.* 2 *t. c.* 189.

C. XXXIV. Quha may not be ane air.

NA perſoun may ſucceid as air to ony manis landis or heritage, quha is not lauchfullie deſcendit of the kin and blude, nather of father nor mother ſide quhairof the landis movit. 6 *Novemb.* 1479, James Liddell *contra* James Calderwod *and the inqueiſt*, 1 *t. c.* 20. & 1358.

C. XXXV. Of the air of him quha deceiſſis rebell.

GIF ony perſoun deceiſſis rebell, and not at the peice of our ſoverane Lord, na man may be ſervit air to him without ſpecial licence and diſpenſatioun askit and obtenit fra the King in that punct: And gif the air being of perfeit age dois diligence, and requeſtis his Hienes to give the ſaid indulgence, and he refuſis or poſtponis to do the ſamin, the maillis, proffeitis and dewteis of the ſaidis landis quhilk pertenit to the ſaid perſoun that deceiſt rebell, aucht and ſould

ſould on na wayis pertene to his Hienes, bot to the ſaid air beand of lauchful age, and requirand licence to enter, and not obtenand the ſamin, as ſaid is. 16 *Decemb.* 1553, John Montgomrie *contra* Catherine Boyle, 1 *t. c.* 703.

C. XXXVI. Delivering of airis.

ANE manis air, or uther bairn, not forisfamiliat, beand takin and with-haldin fra his father, the taker or with-halder may be chargit within ſax dayis to reſtoir and deliver him agane to his father, albeit the ſaid air or bairn have better will to remane with the ſaid taker nor to return to his father. 27 *Jun.* 1537, William Dempſtar *contra the Laird of* Lag, 1 *t. c.* 642.

C. XXXVII. Quhairfoir ane air may foirfalt and tyne heritage.

ANE heretrix being in ward and keiping of hir over-lord, may be diſheriſhit, and foirfalt hir heritage, gif ſcho is convict and decernit to have committit fornicatioun, or to have abuſit hir bodie, induring the time of the ward, and hir part of the heritage ſall accreſce and be adjudgit to the reſt of hir ſiſteris that committit na ſic treſpas: And gif thair be twa or ma remanent ſiſteris, heretrices of ony landis or poſſeſſiounis, and thay all abuſe thair bodies in maner foirſaid, all and haill thair heritage ſall appertene and remane with the over-lord, as eſchete, perpetuallie in all time cuming. *Lib.* 2. *c.* 50. *Quon. attach. c.* 89. *De jud. c.* 80.

GIF ony woman beand ane heretrix of landis was lauchfullie maryit, and thairefter is made ane widow, ſcho is not thairefter in the ward and keiping of hir over-lord, albeit gif ſcho wald marie agane, ſcho ſould ask and require his conſent thairto; and thairfoir ſuppois in the time that ſcho is widow ſcho do abuſe hir bodie, and contenis not hirſelf, ſcho ſall not throw hir incontinence tyne or foirfalt hir heritage; for that quhilk is commounlie ſaid (*viz.* heritage may not be foirfaltit be huredome or fornicatioun) ſould be underſtuid of ane woman, quha being ane widow, and havand bairnis lauchfullie gottin and born in mariage, uſis ſic filthines in time of hir widowhood; for notwithſtanding ſcho do the ſamin, hir ſone and bairnis ſall ſucceid to hir as airis; becauſe all children gottin and born in the bond of mariage, ſould be haldin and repute as lauchful to ſucceid to thair parentis, *Lib.* 2. *c.* 50. *De jud. c.* 126. *Item*, Gif ony man havand na airis maill, bot allanerlie dochteris, ane or ma, maryis hir or thame with ane husband or husbandis, without conſent of his ſuperiour, he, be the law of this realme, tynis and foirfaltis his heritage, and may recover na part thairof, bot be ſpecial grace and mercie of his ſuperiour. *Lib.* 2. *c.* 49.

C. XXXVIII. Of laſt airis.

THE laſt air to ony perſoun deceiſſand, is his over-lord; for quhen ony perſon deceiſſis without ony certane air, ſic as ſone, dochter, or uther certane air, the over-lord, of quhom the landis pertenand to the deid is haldin in cheif, quhidder he be the King, or ony uther over-lord, may put his handis to the landis, and retene thame as his eſchete: And gif ony alledgis him to be richteous air to him that is deceiſt, he may in judgment preive the ſamin, and gif he hes richt thairto, obtene the ſaidis landis: Bot in the mean time of the pley and proces, the ſuperiour may hald the landis in his awin handis; becauſe quhenſoever thair is ony doubt, quhidder he that clamis the heritage is richteous air or not, the ſuperiour may hald

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the heritage until it be knawin quha is richteous air thairto. The like alſo he may do, gif it be not certane quhidder the air be major or minor. Bot thair is ane difference heir to be notit; for quhen the ſuperiour haldis the heritage be reſſoun it is not knawin quha is the certane air, he is underſtuid to hald the ſamin as his eſchete: Bot quhen he haldis the heritage in reſpect of the uncertaintie of the airis age, he is underſtuid to hald the ſamin be reſſoun of ward: And gif na perſoun clamis nor requiris the ſaid heritage, the ſamin ſall remane with the ſaid Lord perpetuallie in all times cuming, as his eſchete, to be diſponit be him at his pleaſour, as his awin proper gudis and geir. *Lib.* 2. *c.* 53. *De jud. c.* 128.

C. XXXIX. Quhat things pertenis to ane air, and firſt to ane appeirand air.

GIF ony perſoun be allanerlie appeirand air to his father, or ony of his predeceſſouris, and wald enter and be ſervit as narreſt and lauchful air to ony of thame, he hes gude actioun to call and perſew all intromettaris with all and ſindrie the evidentis pertening to his predeceſſouris; the quhilkis ſould be deliverit to him, to the effect foirſaid; and the Lady tiercear, or conjunct-fear, gif ony be, upon hir expenſis, ſould have the autentique copie of ſa mony thairof as concernis hir allanerlie. 10 *Julij*, 1568, Gilbert Blak *contra* Jonet Dikſone, 1 *t. c.* 368. 24 *April.* 1559, James Manderſtoun *contra* Euphame Leuchnot. 24 *Maij*, 1559, *The Laird of* Drylaw *contra Lady* Nauchtane, 1 *t. c.* 771.

C. XL. Quhat pertenis to ane air generall.

GIF ony perſoun deceiſſis, leivand behind him ane elder and zounger brother-german, the zounger brother-german allanerlie aucht and ſould be ſervit and retourit air general or univerſal to him, and not the elder; becauſe all airſchip deſcendis, thair beand inferiouris to the deid in the ſamin line: And in ſa far as the elder brother ſucceidis to the zounger, efter his deceis, that is allanerlie be ſpecial proviſioun of the law, anent landis conqueiſt be him, quhilk proviſioun is not extendit attour that ſingular cais of conqueiſt landis, be reſſoun that landis havand allanerlie the name of conqueiſt, quhilk is not extendit to movabill gudis and airſchip of the law of this realme, aſcendis, 14 *Junij*, 1561, *The Quene and* Walter Reid *Abbot of* Kinloſs, *contra* Johne Reid *of* Aikinheid, 1 *t. c.* 792. *Item*, He that is ſervit air general to ony of his predeceſſouris hes juſt richt and titill, be vertue of the ſaid ſervice, to all reverſiounis, contractis and obligatiounis maid to his ſaid predeceſſour, and his aifis, and not renuncit, diſchargit, or diſponit be him to ony uther perſoun befoir his deceis. 8 *Mart.* 1540, Jonet Scot *contra* N. Blair, 2 *t. c.* 23.

C. XLI. The houſe pertenis to the air.

THE ſone beand onlie appeirand air, and not ſervit and enterit air to his father, has juſt richt and titill to call and perſew for delivering to him of the houſe, tour and fortalice quhilk appertenit to his father, and now pertenis to him as air. 2 *Decemb.* 1564, Johne Scougall *contra* Robert Scougall, 2 *t. c.* 299.

C. XLII. The air ſould not have ane bairnis part of gudis.

GIF ony man deceiſſis, leivand behind him ſindrie ſonis, and the eldeſt ſone enteris air to him, and thairefter deceiſſis, the ſecund or nixt ſone enterand as air to his father, and to his landis, ſall not have ane bairnis part of gudis, 1 *April.* 1554, 2 *t. c.* 249. *Item*, Na perſoun ſucceidand as air to his father or predeceſſouris landis,

and airſchip gudis, aucht and ſould have ony part of ony remanent movabill gudis or geir quhilk pertenit to his father, or predeceſſour, the time of his deceis; except he wald caſt in and confer his haill airſchip gudis with the reſt of the ſaid haill movabill gudis and geir altogidder, that equal partage micht be maid thairof betwix him and the reſt of the bairnis. 19 *April* 1554, Andrew Law *contra* Alexander Law, 1 *t. c.* 734.

Of airſchip gudis.

C. 1. Airſchip gudis pertening to the air.

HE that is richteous air to ane burges, male or female, that is deceiſt, may, be reſſoun of airſchip, challenge and clame thir gudis and geir under-written, or the avail thairof, in ſwa far as he may preive thay ar worth, *viz.* the beſt buird and buird claith, ane hand towel, ane laver, ane baſine, the beſt bed, with ſcheittis and utheris claithis pertening to ane bed, with fedder bed and bolſter; the beſt brewing leid, the mask fat, with tub, barrellis, and laid-gallon; ane caldron, ane brander, ane ladill, ane irne cruik, ane chimnay, ane chair, ane kiſt, ane valhooſe *; ane pleuch, ane wain cairt, ane ſled, car and harrow; ane mekle braſin pot, ane littill braſin pot, ane poſnet, ane roſting irne, ane gridiron, ane girdle, ane pan, ane mortar with a peſtle, ane diſch, ane dubler, ane chair-gear, ane cop; and gif thair be twelf ſpoonis, or ma, the air ſall have twelf; bot gif thair be fewar nor twelf, the air ſall have bot ane; ane bink, ane ſtuil, ane flail, the balance, the wechtis, and ſpade, ane bull-ax, and all uther thingis that is knawin to pertene to the airſchip, of the quhilk all and ſindrie gudis and geir the beſt ſould pertene to the air as airſchip. *Item*, It is ſtatute be the burgeſſis of *Berwick*, *Edinburgh*, *Roxburgh*, *Striviling*, at *Halidruidhous*, *anno Domini* 1395, that nather ſchip, crear or boat pertening to ony burges that is deceiſt, may pertene as airſchip to his air, bot the beſt palfray quhilk pertenit to the burges the time of his deceis, ſould pertene to him be reſſoun of airſchip, except the ſamin was left in legacie be him to ony religious or haly place; and gif he ſa left and diſponit the ſamin, the air may ask the nixt beſt horſe, *Leg. burg. c.* 116. *Leg. Foreſt. c.* 40. *Item*, The air ſall have, be reſſoun of airſchip, all chartouris and evidentis of fie and heritage, or utherways, concerning the air, ane ſeill of armis, ane cap, ane bonnet, ane hat, ane coit, ane doublet, ane ſark, ane pair of hoſe, ane pair of ſchoone, ane pair of pantonis, ane belt, ane knife, ane purſe, ane bag, ane gown, ane jakket, ane claſp of gold or ſilver, ane target, ane brotche. The beſt cheinzie ſould pertene to the air, as airſchip, gif he previs ſufficientlie that his predeceſſour uſit the ſamin, and had it to his uſe as an abulzeament of his perſoun. *Item*, the cuſheon, or ornament of the ſait and daſk in the kirk pertening to him that is deceiſt, ſould pertene as airſchip to his air. *Item*, Ane ſteil bonnet, ane ſallet, ane jak, ane ſword, with ane buckler, ane hand-bow, with ane ſcheife of arrowis, ane croſs-bow, with genzies, ane riding ſadill, ane pair of buits, ane pair of ſpurris, ane pair of brottikinis, with all other riding geir. *Item*, Ane langſettil bed with ane arras work, ane mantle, ane napſek, ane ruif of ane bed, ane pair of bed-cour-

* Lat. *hucha*. Fr. *huche*.

courtinis. *Item*, Ane compter-buird, ane compter buird claith, ane bonker claith, ane furme, ane chair, ane hingand lavar, ane ſilver peice, ane maiſer, ane ſalt-fat, ane butter plait, ane ſkink-plait, ane beif plait, ane luggit diſch, ane gardin, ane ſauſer, ane trunſcheour, and ane doſſon of great pewter veſchell, twelf ſervettis and ane buird-claith of dornique, or than the beſt linning buird-claith, ane waſhing towel, ane mekle and litle pan, ane guſe pan, ane frying pan, ane copper kettel, ane cruet of irne with thré feit, quhilk utherwayis is callit ane chaffer, ane pair of tangis, ane cruik, ane pair of bellows for the fire, ane ſpeit, ane meit almerie, ane wair almerie, ane ſcrine, ane letteron, ane preſs, ane chandler, ane mutchkin, and chopin, ane ſax-part, ane pynt, quart, and half galloun ſtoup. *Item*, Ane pick, a mattok, ane gavelok, ane ſhool, ane ax, ane pair of turkiſſis, ane hand-ſaw, ane hewing ax, ane ſled, ane cupple of harrowis, ane ox, and all graith and inſtrumentis of ane pleuch, ane pair of bulgettis, ane barrow. *Item*, Ane baik-ſtule, ane fleſch fat, ane mekle pype, ane peck, ane breid baſket, ane masking fat, ane great ſtand, ane tub, ane gyle-fat, ane cymming, ane laidgallon, ane wort diſch, ane pitcher. *Pen. Feb.* 1489, John Knollis *contra* William Halkirſtoun. 9 *Mart.* 1488, *S.* William Jakſon *contra S.* George Gray *Chaplanis*. 21 *Mart.* 1502, Andro Murdieſon *contra* Robert Lauſon. 2 *Mart.* 1528, *L.* Elphingſtoun *contra L.* Forbes. 18 *Feb.* 1499, Archibald Craufurd *contra* Robert Preſtoun. 4 *Julij*, 1517, *Lord* Hereis *contra* Nicholas Home. 22 *Junij*, 1534. 20 *Novemb.* 1567, *Sir* William Craufurd *contra M.* Johne Abircrombie.

ITEM, The haill apperreling of the hall pertenis to the air, as airſchip, *Pen. Feb.* 1489, John Knollis *contra* William Halkirſtoun. Bot gif he that is deceiſt have divers and ſindrie tapeſtries, the air may not acclame as airſchip, bot allanerlie the beſt peice of the ſamin: And ſiclike, gif the deid have divers and ſindrie pavilions pertening to him the time of his deceis, the beſt pavilion allanerlie pertenis to the air. 10 *Novemb.* 1575, *The Lord* Drummond *contra the Ladie* Drummond.

ITEM, Na ſchip or boit pertening to ony man the time of his deceis, may be aſkit or cravit be his air as airſchip, be reſſoun the ſamin on na wayis pertenis to him in reſpect of airſchip. 27 *Mart.* 1527, Patrik Brown *contra* Thomas Brown.

C II. Airſchip of movabill gudis.

AIRIS of Baronis, gentlemen and frehalderis, ſall have airſchip of movabill gudis, conform to the ſtatute of the burrow lawis. *Ja.* III. *fol.* 58. *act.* 66. 9 *Maij*, 1474.

Quhat gudis ar not clamabill as airſchip gudis.

ITEM, Ane air may not clame, be reſſoun of airſchip, ony gudis and geir that was ane ornament of the bodie of the wife of him quha is deceiſt, and that ſcho uſit to wear in hir husbandis time. *Item*, He may not crave, as airſchip, ony gudis or geir that ſumtime pertenit to him that is deceiſt, and befoir his deceis wer ather tint, ſauld or annalzeit be him. *Item*, He may not crave in airſchip ony gudis or geir laid in wad to him that is deceiſt, albeit the ſamin was in his poſſeſſioun the time of his deceis. *Item*, He may ſeik na airſchip of ſic gudis and geir as were in poſſeſſioun of him that is deceiſt, the time of his deceis, and that, becauſe thay pertenit

nit to ane uther man, ar reſtorit and deliverit agane to him befoir or after the death of him be quhais deceis the airſchip is acclamit, *Pen. Feb.* 1489, John Knollis *contra* William Hackirſtoun: Becauſe the air may ſeik airſchip of movabill gudis allanerlie quhilk he may lauchfullie preive, that he to quhom he is air had in poſſeſſioun, as his awin proper gudis, the time of his deceis. 20 *Mart.* 1491, Alexander Quhyte *contra* Giles Fentoun, 1 *t. c.* 40.

C. III. Airſchip of him quha had twa wives.

ONY man deceiſſand quha hes had twa wives, or ma, with bairnis and ſucceſſioun with thame, the firſt wife's eldeſt ſone ſall have his haill airſchip of all movabill gudis quhilk pertenit to his father, and was in his poſſeſſioun the time of his deceis. 21 *Feb.* 1510. 1 *t. c.* 162.

C. IV. Airſchip of ane heretrix deceiſſand.

GIF ony Ladie of heritage, lauchfullie maryit with ane husband, deceiſſis, leivand behind hir na lauchful bairnis gottin of hir bodie, the narreſt of hir kin ſould have ane juſt airſchip of all gudis and geir pertening to hir the time of hir deceis; and ſcho in hir teſtament or latter will may not diſpone the ſamin to hir huſband, or ony uther, be way of executorie, or be reſſoun of legacie. 12 *Mart.* 1562. *The Laird of* Tracquair *contra* Patrik Home, 2 *t. c.* 292.

C. V. Air general ſould not have airſchip.

ALBEIT that ane be ſervit air general to ony of his predeceſſouris, as to Prelat, Baron or burges, zit nevertheles gif he be not ſervit air to him of ſum landis, or ſum immovabill gudis, he may not clame ony airſchip gudis; becauſe in this cais all the movabill gudis pertenis to the executouris, without ony deductioun or defalcatioun of airſchip, 8 *Mart.* 1540, Jonet Scot *contra N.* Blair, 2 *t. c.* 22. 23 *Maij*, 1542, *N.* Carnegie *contra M.* John Aitoun, 2 *t. c.* 97. 15 *Mart.* 1540, Jonet Scot *contra N.* Blair, 1 *t. c.* 41. Bot gif ony gentleman or Baron, beand frank-tenementar allanerlie of ony landis, deceiſſis, his air aucht and ſould have airſchip gudis, albeit he be not ſervit air to him in ſpecial of ony landis, bot air general allanerlie. 9 *Julij*, 1543, Margaret Crawfurd *contra* Thomas Crawfurd, 2 *t. c.* 151.

C. VI. A baſtard ſould not have airſchip.

ITEM, Gif ony man alledgeand him to be air to ony uther, clamis ony airſchip gudis, and it happin the exceptioun of baſtardrie to be objectit aganis him befoir the temporal or ſecular Judge, the Judge ſall refer the knawledge thairof to the ſpiritual Judge: And gif baſtardrie be ſufficientlie provin aganis him befoir the ſpiritual Judge, the temporal Judge ſall decern na airſchip to pertene to him, becauſe ane baſtard may not be ane air, nor crave airſchip gudis. 27 *Junij*, 1480, John Johnſtoun *contra* Gawin Johnſtoun, 1 *t. c.* 27.

C. VII. Alienatioun of airſchip.

ITEM, It is leaſum and permittit to ony perſoun to leive in legacie his wapinis, armour, and inſpreth of his houſe to quhom he pleiſis, in time of his health, or on his death-bed, he reſervand alwayis to his air his beſt armour and principal inſpreth; for the air ſould have the beſt of all and ſindrie movabill gudis pertening to his predeceſſour: Bot it is leaſum to ony man in his *liege pouſtie* to ſell and put away fra his air all and ſindrie his movabill gudis and geir quhilk micht

micht pertene to his air, as airſchip, gif he be in great povertie and neceſſitie, and previs the ſamin ſufficientlie be famous witneſſis, *Leg. burg. c.* 116. *Leg. Foreſt. c.* 40. And gif he that is deceiſt, in his *liege pouſtie*, and befoir his deceis, diſponit all and haill his airſchip gudis, his air aucht and ſould have no airſchip be reſſoun of his deceis: And gif he diſponit ane part thairof allanerlie, the remanent undiſponit pertenis to the air. 11 *Decemb.* 1534, 4 *Novemb.* 1579, Elizabeth *and* Euphame Colvillis *contra* Euphame Dundas, 1 *t. c.* 41.

C. VIII. Keiping of airſchip.

THE airſchip gudis pertening to the pupill ſould be in cuſtodie and keiping of the tutor, and not of the mother, or ony uther freind, to be furthcumand to the air at his perfeit age, 16 *Mart.* 1519, Johne Campbell *contra* Jonet Montgomrie. 22 *Jan.* 1516, Jonet Ferquhar *contra* Marion Day, 1 *t. c.* 379.

C. IX. Anent the ſuſtentatioun of airis.

GIF ony man deceiſſis, leivand behind him all his landis in the Ladyis handis be reſſoun of tierce, liferent, or conjunct-fie, ſwa that his air hes na part thairof to live and be ſuſtenit upon, the Lordis havand reſpect and conſideratioun of his neceſſitie and indigence, may taxt and modifie, at thair diſcretioun, ane certane ſowme or part of the maillis and dewteis of the ſaid Ladyis tierce, liferent, or conjunct-fie landis, ilk ane efter the rate and quantitie of thair landis, to be upliftit, bruikit and joiſit zeirlie be the ſaid air for his ſuſtentatioun, quhidder he be minor, or of perfeit age. 13 *Mart.* 1545, George *Erle of* Huntlie, *quha gave in his ſupplicatioun to the effect foirſaid.*

Anent baſtardis.

C. I. Quha may ſucceid to ane baſtard.

ANE baſtard may have na richteous air, except the ſamin be lauchfullie gottin of his awin bodie; and thairfoir gif ony perſoun, beand born baſtard, conques or purches ony landis heritablie, be diſpoſitioun maid be ony man to him thairof, for his ſervice, or for ony uther cauſe, and he deceiſſis veſt and ſaiſit in the ſamin, without lauchful airis of his bodie, his over-lord, quha gave and diſponit to him the landis for the cauſis foirſaidis, aucht and ſould ſuccede to him thairintill. *Lib.* 2. *c.* 51. *De judic. c.* 54. 128. *Leg. Foreſt. c.* 30.

C. II. The King is air to ane baſtard.

ANE perſoun born baſtard, and deceiſſand baſtard, without lauchful airis gottin of his bodie, or without lauchful diſpoſitioun maid be him of his gudis, in his lifetime, all his gudis, movabill and unmovabill, pertenis to the King as eſcheit, and as laſt air, be reſſoun of the richt of his Hienes crown, except the landis be haldin in cheif of ane uther over-lord than his Hienes. 12 *Decemb.* 1542, 1 *t. c.* 655.

C. III. The movabill airſchip, and the half of the movabill geir, togidder with all the immo-

GIF ony man beand baſtard deceiſſis, leivand behind him ane lauchful wife, without ony ſucceſſioun, or bairnis, lauchfullie gottin of his bodie, the King, or his donatour, gif he ony makis and con-

vabill gudis, pertenis to the King.

conſtitutis heiranent, aucht and ſould have the haill movabill airſchip of the ſaid baſtard be itſelf, and alſwa all and haill the unmovabill airſchip, gif ony be, togidder with the ane half of the movabill gudis quhilkis pertenit to the ſaid baſtard at the time of his deceis, he findand ſufficient cautioun to content and pay the debtis that wer awand be the ſaid baſtard, as accordis of the law, and as is efter ſpecifyit; and als allowand the haill debtis and expenſis maid and payit for the kirk richt, and at the burial of the ſaid baſtard, according to his facultie. 18 *Feb.* 1502, Jonet Johnſtoun *reliſt of umquhile* William Murray *contra* Johne Francis *of* Lumbardie *the Kingis donatour*, 1 *t. c.* 138.

C. IV. The King ſuccedand to a baſtard, ſould pay the debtis auchtand be him.

GIF the King, or his donatour, gettis or reſſavis, be reſſoun of baſtardie, the half of the movabill gudis and geir quhilk pertenit to the baſtard, he aucht and ſould pay the half of the debtis auchtand be the ſaid baſtard the time of his deceis: And gif he intromettis with the half of the movabill gudis, and with all his landis, he is bund and obliſt thairfoir to pay all and haill the debtis. 29 *Julij*, 1566, 2 *t. c.* 319.

C. V. The King ſould not ſuccede to ane baſtard leivand behind him ane air gottin lauchfullie.

GIF ane born baſtard deceiſſis baſtard, leivand behind him ane bairn lauchfullie gottin of his bodie, the ſamin bairn, beand male or female, may ſuccede as richteous and lauchful air, in his landis, gudis and geir; and thairfoir the King hes na richt nor titill to the ſaidis landis, gudis nor geir, be reſſoun of baſtardie: And it is ſufficient gif he that is deceiſt baſtard leive behind him, the time of his deceis, ane air lauchfullie gottin of his bodie, albeit he left na landis or immovabill gudis; for in this cais it is enough he left ſic ane lauchful air behind him, quhilk micht have ſuccedit to landis, gif ony had bene left, albeit thair be nane to the quhilk he may ſuccede. 11 *Decemb.* 1546. 17 *Septemb.* 1546. 24 *Mart.* 1546. Duncan Dundas *donatour contra* James Moffet. 7 *Decemb.* 1563, Johne Auld *contra* Guthrie Millar, 1 *t. c.* 649.

C. VI. The King ſuccedis to kirkmen being baſtardis.

GIF ony eccleſiaſtical perſoun or uther be born baſtard, and deceis baſtard without lauchful airis of his bodie, and na diſpoſitioun of his gudis and geir maid be him in his lifetime, the ſamin pertenis to the King as eſcheit: And gif the King, or his donatour, be perſewit for ony debtis auchtand be him befoir his deceis, the ſpiritual Judge is not Judge competent thairanent, albeit the perſewar be ane uther eccleſiaſtical perſoun. 13 *Mart.* 1534, 1 *t. o.* 1006.

C. VII. The king is air to ane bairn lauchfullie gottin of ane baſtard father.

GIF ony perſoun born baſtard deceiſſis, leivand behind him ane lauchful wife, and als ane lauchful bairn gottin betwix him and his ſaid wife, all the movabill gudis, money and poſe quhilk pertenit to him the time of his deceis, ſould be devydit in thré partis, *viz.* the deidis part, the wife's part, and the bairn's part: As to the deidis part, the ſamin micht have bene diſponit be him the time of his deceis to quhatſumever perſoun or perſounis he pleaſit: Bot gif he maid na lauchful diſpoſitioun thairof in his lifetime, the ſamin part, all and haill pertenis to the bairn, as onlie lauchful bairn on life the time of his fatheris deceis, and ſwa twa partis of the ſaidis thré partis, *viz.* the ſaid bairnis part, and the deidis part, aucht and ſould pertene to the

the ſaid bairn; and ſwa conſequentlie the ſaid thrid part pertenis to the ſaid wife, as ſpouſe and wife to the deid, als weill of all ſilver work, and of all pleniſhing, and houſhold geir, as of uther movabillis pertening to hir husband the time of his deceis: And gif it happin the ſaid bairn to deceis without lauchful airis gottin of his bodie, all and haill the ſaid gudis and geir, *viz.* the ſaid twa partis, not beand diſponit be him in his lifetime, aucht and ſould pertene to the King be the privilege and richt of his crown, 4 *Nov.* 1570, Elizabeth *and* Euphame Colvillis, *contra* Euphame Dundas, 1 *t. c.* 879. For be the law of this realme, gif ony perſoun born baſtard hes a bairn, male or female, lauchfullie gottin with his maryit wife, and efter his deceis the ſaid bairn enteris air to his father in his landis, gudis or geir, and thairefter happinis to deceis without lauchful airis gottin of his bodie; in this cais the King ſould ſuccede to the ſaid bairn, and, efter his deceis, bruik his landis, gudis and geir, be reſſoun of eſcheit; becaus the ſaid bairn may not have an air of the fatheris ſide or blude; for the father was baſtard, and thairfoir the ſone is underſtuid not to have ony agnates: And ſiclike, the bairn may not have ane air of the motheris ſide or blude, ſic as mother brother; for then it wald follow that the mother micht be air to hir bairn, quha wes air to his father, and ſwa conſequentlie the wife micht be air to hir husband, aganis all law and ordour of ſucceſſioun. *De baſtardia, N.* 6. *ad fin. L. foreſt.*

C. VIII. A baſtard may not be ane lauchful air.

NA baſtard or perſoun gottin or born outwith the band of marriage may be ane richteous air: And thairfoir, gif ony perſoun, as air, clamis ony heritage fra ane uther, and the defender alledgis that the perſewar is baſtard, not gottin in lauchful mariage; this clame of heritage intentit befoir the temporal Judge, ſall ceis and ſleip until the queſtioun of baſtardie be decidit befoir the ſpiritual Judge, and quhill it be certanlie knawin quhidder the perſewar is baſtard, or lauchfullie begottin; for it pertenis not to the temporal Judge to judge and decide in the actioun and cauſe of baſtardie; and the ſamin beand objectit in his court, ſould be remittit be him to the ſpiritual Judge, and the ſpiritual Judge, as he findis heirintill, ſould certifie the temporal: And gif it be found befoir him that the perſewar is baſtard, the temporal Judge ſall decern the heritage on na wayis to pertene to him: And gif it be found that he is lauchfullie begottin, he may enter air, and have the heritage be decreit of the ſaid temporal Judge, gif thair be na uther reſſonabill cauſe quhy he ſould not have the ſamin. *Lib.* 2. *c.* 50. *De jud.* *c.* 127.

C. IX. Of legitimation be mariage followand efter the getting of the bairn.

GIF ony children be gottin and born betwixt ane man and ane woman, not beand at that time joinit in the band of mariage, and thairefter it happin the ſamin man lauchfullie to marie the ſamin woman, the bairnis gottin or born befoir the completing of the mariage ar legitimat, and maid lauchful, and thairfoir may ſuccede as richteous air to thair parentis: And gif thair be ony contraverſie or queſtioun, quhidder thay war gottin or born befoir the completing of the mariage, the ſamin ſall be diſcuſt befoir the ſpiritual Judge, as is immediatlie befoir ſaid of baſtardie. *Lib.* 2. *c.* 50. *De judicib.* *c.* 127.

GIF

C. X. A baſtard rehabilitat be the King, may have a lauchful air.

GIF ony perſoun born baſtard be efterwart lauchfullie rehabilitat and legitimat be the King, (quhilk ſould be under the teſtimonial of the greit ſeill) and thairefter happinis to deceis, havand landis, tenementis, or ony movabill gudis, the airis lauchfullie gottin of his bodie, and failzieing thairof, ony utheris his narreſt and lauchful airis quhatſumever, have full powar and richt to ſucceid to the ſaidis landis and gudis, like as the ſaid perſoun had bene lauchfullie gottin or born: And thairfoir the King, nor his donatour, hes na richt nor titill to the ſamin be reſſoun of baſtardie, ſpeciallie gif the ſamin be contenit in his letter of legitimatioum. 29 *Mart.* 1503. 10 *Novemb.* 1502, William Sinclare *the Kingis donatour, contra* Archibald Edmonſton, *air of tailzie to* Jonet Fudes *and utheris*, 1 *t. c.* 146.

C. XI. A baſtard rehabilitat, may mak ane teſtament.

GIF ony perſoun born baſtard be lauchfullie rehabilitat and legitimat, he hes powar to mak ane teſtament, diſpone his gudis and geir, and to nominat executouris: And gif he makis teſtament, or failzeis to mak the ſamin, the King, efter his deceis, hes na richt nor titill be reſſoun of baſtardie, to his gudis or geir, or to ony debtis quhilk war auchtand to him the time of his deceis. 27 *Junij*, 1559, *The King* contra *the Biſchop of* Aberdene, 1 *t. c.* 774. 21 *Feb.* 1542, 2 *t. c.* 134.

C. XII. He that is haldin and repute lauchful during his lifetime, may not be provin baſtard efter his deceis.

GIF ony perſoun being in veritie baſtard, allegeing him to be lauchfullie gottin, enteris as air to his predeceſſour in ony landis or tenementis, and remanis in poſſeſſioum and ſaſine thairof unto the time of his death, or diſponis and annalzeis the ſamin in his lifetime, and thairefter deceiſſis befoir ony ploy, or clame, or pley, be intentit aganis him be the richteous air of the ſaidis landis; in that cais gif the richteous air wald clame and challenge the ſaidis landis efter the ſaid baſtardis deceis, he ſall not be heard to do the ſamin: And thairfoir, gif ane man has twa ſonis, the eldeſt baſtard, and the ſecund lauchful, and the baſtard ſone enteris as lauchful air to his father, and is repute and haldin lauchfullie gottin, and ſwa remanis and continues in peciabill poſſeſſioun of his fatheris landis unto the time of his deceis, his ſone, or uther richteous air, gottin of his bodie, ſall ſucceid as air to him; and his brother, quha beand lauchfullie gottin, is only richteous air of the ſaidis landis, ſall never be heard in ony time cuming to clame the ſamin as air; becauſe gif ony man be haldin and repute in all his lifetime as lauchfullie gottin in mariage, efter his deceis na man ſould be admittit to preive that he wes baſtard, *De baſtardia, N.* 1. *&* 5. *De judicib. c.* 97. And ſiclike, he that is fund be decrete of ane Judge to be lauchfullie gottin, may not in ony time efterward be provin to be baſtard. *N.* 5.

Anent homage and fealtie.

C. I. Quha ſould give homage.

HOMAGE may be maid be ony freman, beand male, als weill of lauchful age as within age, or als weill Clerk as laique man. *Item*, Thay that ar conſecrat Biſchoppis ſould mak na homage, bot thay that ar choſin and electit to be Biſchoppis, befoir thair

thair conſecratioun, ſould mak the ſamin. And ſiclike, all men havand landis gevin to thame in name of fré almonis be the King, ar bund to mak him homage. *Lib.* 2. *c.* 61. & 65. *De jud.* *c.* 134.

C. II. Quha ſould not mak homage.

CONSECRAT Biſchoppis ſould not mak homage to the King for thair baronies and landis gevin to thame in name of fré almonis; for thay ar bund to mak ſealtie allanerlie, *Lib.* 2. *c.* 61. & 65. *De jud.* *c.* 77. & 134. *Item*, Women of the law ſould do na homage, albeit oftentimes thay uſe to mak ſealtie to thair over-lordis, *Lib.* 2. *c.* 60. Nevertheles gif ony man deceis, leivand behind him divers and ſindrie dochteris, heretrices of ony landis, for the quhilk homage ſould be maid, the eldeſt dochteris husband aucht and ſould mak homage to the ſuperiour for all and haill the ſaidis landis, and the remanent efter born dochteris, or thair husbandis, gif thay ony have, ar oblist to do ſic ſervice as thay aucht for thair landis, be the handis of the firſt born dochter, or hir husband, to thair ſuperiour or over-lord. And attour, thay and ilk ane of thame, aw ſealtie and ſuit of court to the ſuperiour: And gif ony of thame happinis to deceis, the ward and mariage of thair landis and airis may juſtlie pertene to him as over-lord. And it is to wit, that the husbandis of the ſaidis efter born dochteris ſould mak na homage nor ſealtie to the husband of the eldeſt dochter, induring thair lifetime, like as thair firſt and ſecund airis on na wayis ſould do the ſamin; bot the thrid air deſcendand of the ſaidis dochteris, be the law of this realme, ſould mak homage, and alſo pay ane reſſonabill relief to the air of the eldeſt dochter, *Lib.* 2. *c.* 32. *De jud.* *c.* 106. & 117. For conſidering thay ar all ſiſteris, and in a maner as ane air of ane heritage, gif the eldeſt ſould have homage of the uther ſiſteris, or demand ward, or ony uther ſubjectioun, of thame, then the heritage ſould appeir to be dividit, ſwa that the eldeſt ſiſter ſould appeir to be ſuperiour and air of the ſamin hetage *ſimal & ſemel*, viz. ſuperiour to hir ſiſteris, and heretrix or tenent of hir awin part; the quhilk cannot well ſtand togidder in this cais. *De jud.* *c.* 106.

C. III. To quhom homage ſould be maid.

HOMAGE ſould be maid to the ſuperiour of the fie and heritage, being ane fré man, male or female, major or minor, Clerk or laique man: And gif homage be maid to ony woman unmaryit for ony land or tenement, and ſcho thairefter marie ane husband, the maker of the homage ſould mak homage of new agane to hir husband for the ſamin landis, *Lib.* 2. *c.* 67. *De jud.* *c.* 63. & 134. *Item*, Ane man may mak divers homages to ſindrie over-lordis, for divers landis, bot ane of the ſaidis homages mon be principal, cheif and leige homage, the quhilk kind of homage ſould be maid be the tenent to that over-lord of quhom he hes the eldeſt halding, and of quhom he haldis in cheif his eldeſt and firſt infeftment of landis, *Lib.* 2. *c.* 60. *De jud.* *c.* 133. *Item*, It is generallie trew that na homage may be maid to ony man in name and behalf of the over-lord, to quhom the ſamin ſould be maid; for all homage ſould be maid to the over-lord himſelf, being perſonallie preſent. *De jud.* *c.* 107.

C. IV. At quhat time homage ſould be maid.

GIF ony manis ſather, or uther predeceſſour, deceiſſis, the over-lord ſould reſſave incontinent the homage of the richteous air, being male, quhidder he be of perfeit age, or within age: for gif the air be male and minor, the over-lord, of the law, ſould not have the mariage of the air, nor the ward of the landis, except firſt he reſſave his homage: And attour, na over-lord may clame or ask ony ſervice or relief from the air of his tenent that is deceiſt, albeit the air be major or minor, untill that firſt he reſſave the homage fra the air for his landis, for the quhilk he clamis or deſyris the ſervice or relief, *Lib.* 2. *c.* 60. *Leg. Foreſt. c.* 74. *De jud. c.* 132. *Item*, It is leaſum to the over-lord ſumtime to differ and delay the reſſaving of homage fra the tenent, for ane reſſonabill cauſe, *viz.* gif thair be queſtioun or contraverſie betwix him that alledgis himſelf to be air, and ony uther clameand richt and titill to the ſamin heritage; for the over-lord is not obliſt to reſſave homage fra ather of thame induring the dependence of the pley: Or gif the over-lord alledgis himſelf to have gude titill and richt to the ſaid heritage, to hald and retene the ſamin in his handis, as his propertie, and is readie to put the ſamin to the knawledge of ane greit aſſiſe, or of ony competent Judge, quhidder he or the alledgit air hes maiſt richt to the ſaid heritage, *De jud. c.* 139. Gif ony fré tenent refuſis to mak homage, or to do that quhilk he aucht be law and reſſoun, and the over-lord is not of ſufficient powar to judge and juſtifie him thairfoir in his awin court, he may rais and obtene the Schireffis letteris for his aid and help. And gif the over-lord preivis ſufficientlie his clame and petitioun aganis his tenent, he ſall obtene and win his cauſe, and the tenent ſall be in the will and mercie of the Schiref. *De jud. c.* 139.

Reaſons for delayis of the reſſait of homage.

C. V. For quhat landis or poſſeſſiounis homage ſould be maid, or not.

HOMAGE ſould be maid allanerlie for landis and fré tenementis, for ſervices, for rentis ſpeciallie aſſignit, and conſiſtand in money, or in uther thingis, *pro ſolo vero dominio non fit homagium.* All homage ſould be maid allanerlie for landis and tenementis quhilk are fré fra ſervice, and fra annuelrentis conſiſtand in money, or in ony uther thing: Bot homage ſould not be maid at all times for all landis; for na homage is due for landis gevin in fie, mariage, or for dowrie, or conjunct fie, nather for landis pertening to the efter born ſiſteris, and haldin of the eldeſt ſiſter, for the quhilk thay, nor thair airis, makis na homage unto the thrid air; alſo na homage ſould be maid for ony landis gevin in fré almonis. *Item*, For landis gevin ony maner of way in maritage, be ony man, with his ſone or dochter, na homage ſould be maid be the husband of the woman with quhom the ſamin is gevin, *Lib.* 2. *c.* 66. *De jud. c.* 134. Becauſe quhen ony ſic landis ar gevin in maritage, gif ſcho deceis without airis gottin of hir bodie, the ſamin landis returnis frelie to the gevar, or to his air; and for this cauſe na homage ſould be gevin or takin of ſic landis; for gif homage war gevin for thame, thay on na maner of way micht return to the gevar, or to his air, *Lib.* 2. *c.* 58. *De jud. c.* 129. *Item*, The husband of ane Lady haveand landis pertening to hir be reſſoun of dowrie, ſould not do homage to the air, or ony uther perſoun, quha of the law is obliſt to warrand to hir the ſaidis landis; bot he ſall allanerlie mak fealtie thairfoir; for gif he maid ony homage for the ſamin, and it happinit that his wife

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deceiſt befoir him, quhairthrow the liferent expirit, then the homage maid be him ſould ceis and have ane end, the landis for the quhilk the ſamin was maid na langer remaneand with him; the quhilk be the law and equitie cannot be; for all homage done be ony man is underſtuid to laſt and indure for all the dayis of his lifetime that makis the ſamin, *Lib.* 2. *c.* 49.

C. VI. How homage ſould be maid.

HOMAGE ſould be maid in this maner, *viz.* The maker thairof ſould ſay, "That he becumis man to his Lord, and ſall be faith-"ful and leill to him for the landis for the quhilk he makis ho-"mage unto him; and that he ſall in all thingis keip his warldlie "honour, out-taking his fealtie to the King and his ſucceſſouris." *Lib.* 2. *c.* 61. And in the mean time of the making of the homage, the maker ſall hald his handis faſt joinit togidder betwix his Lordis handis, and upon his Lordis breiſt, *Leg. Foreſt. c.* 61. Quhen ony man dois homage to ane uther over-lord than to his cheif over-lord, he ſall hald his handis togidder in maner abone expremit, and ſall ſay in this maner: "I becum zour man fra this "day furth, and ſall keip faith to zou for the landis and tenementis "quhilk I hald of zou, out-taking the fealtie quhilk I aw to my "liege Lord the King, and to my utheris over-lordis." *Leg. Foreſt. c.* 61.

C. VII. The maner of making fealtie.

QUHEN ane tenent makis fealtie to his Lord, he ſould lay his richt hand upon ane buik, and ſay on this maner: "Hear ze, my "Lord, I ſall be leill and feal to zou, and ſall keip faith and lau-"tie to zou, for the landis and tenement quhilk I hald of zou in "cheif, and ſall faithfullie do all cuſtumis and ſervice in dew time, "quhilk I aucht and ſould do. Swa help me God. *Leg. Foreſt. c.* 61.

Anent mariage of airis.

C. I. The mariage of ane air of ward-landis pertenis to his immediat ſuperiour.

GIF ony perſoun deceiſſis veſt and ſaiſit in ony landis haldin be him of his ſuperiour, be ſervice of ward and releif, leivand behind him ane air, or airis, unmaryit, the mariage of the ſaid air, or airis, or of ony uther airis (beand in likewayis unmaryit) that ſall happin to ſucceid to him in the ſaidis landis, or ony part thairof, pertenis to his immediat ſuperiour and over-lord, *Pen. Feb.* 1567, *Laird of* Drumlanrig *contra* Marion Carrutheris. Attour, gif the air have ony landis haldin be ſervice of ward and releif, quhairunto he is not enterit, and zit may enter efter his predeceſſouris deceis; his mariage pertenis to the ſuperiour, albeit he be already enterit to the reſt of his landis, and put in the fie thairof befoir his predeceſſouris deceis. *Pen. Julij*, 1534, 1 *t. c.* 990.

C II. Of the mariage of ane air beand put in fie of the land.

GIF ony man deceiſſis, leivand behind him ane air of perfeit age, not veſt, ſaiſit nor enterit in his landis, albeit the ſamin landis, or ony part thairof, be haldin be ſervice of ward and releif, the ward thairof on na wayis pertenis to the ſuperiour, becauſe the air, beand of perfeit age, may enter thairto: And gif he failzeis

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to do the ſamin, the landis pertenis to the ſuperiour be reſſoun of non-entres fra the time of the deceis of the laſt heritabill poſſeſſour, unto the time of the entres of a richteous air to him thairof. Bot gif ony man deceis, leivand behind him ane air of lefe age, quha, befoir his deceis, was lauchfullie veſt and ſaiſit in the ſaidis landis, ather be a bas infeftment and ſaſine maid and gevin be the predeceſſour in his lifetime, to be haldin of him, or be ony uther lauchful infeſtment, the ſamin landis, nather be reſſoun of ward nor zit of non-entres, can cum in the ſuperiouris handis, induring the time of the ſaid infeftment maid and gevin to the ſaid air. And as to the mariage of the air, the ſamin aucht and ſould pertene to the ſuperiour, he beand unmaryit the time of his father or predeceſſouris deceis; in baith the caiſſis forſaidis, to wit, quhidder the air foirſaid be of perfeit age, and not ſaiſit in the landis, or of les age, and ſaiſit in the ſamin. 11 *Mart.* 1532. 20 *Maij*, 1534. Margaret Gordoun *contra* James Forbes *of* Auchinbill, 1 *vol. c.* 92.

C. III. Mariage of ane, albeit minor, that is in fie of the land.

GIF ony man haldand landis of the ſuperiour be ſervice of ward and releif, puttis his appeirand air in the fie of all and haill the ſaidis landis, and it happinis him thairefter to deceis; albeit the ſaid air be minor and of les age, nather the ward of the landis, nor the mariage of the ſaid air, pertenis to the ſuperiour: Bot gif the ſaid air was not put in the fie of the ſaid haill landis, and thairby thair be as zit ſum part thairof quhilk pertenit to his predeceſſour the time of his deceis, unto the quhilk as zit he may enter as air to him, the ward of that part allanerlie, togidder with the mariage of the air, not beand maryit, aucht and ſould pertene to the ſuperiour. 18 *Julij*, 1532, 1 *vol. c.* 421.

C. IV. Diſpoſitioun of the mariage of ony manis air.

ANE gift beand grantit and diſponit be the ſuperiour to *Cornelius*, of the ward of the landis and annuelrentis quhilk pertenit to umquhile *Cajus*, the time of his deceis, togidder with the mariage of *Sempronius*, air to the ſaid umquhile *Cajus*, and failzieing of him be deceis unmaryit, the mariage of *Titius*, or of ony uther air or airis, male or female, of the ſaid umquhile *Cajus*, quhilk ſall happin to ſucceid to him in his heritage, gif the ſaid *Sempronius* happinis to deceis, not beand enterit to his landis, the mariage of *Titius*, narreſt air to *Cajus*, ſall pertene to the ſaid *Cornelius* be vertue of his gift foirſaid: Bot gif the ſaid *Sempronius* was enterit befoir his deceis air to *Cajus*, and obtenit ſaſine of his landis and heritage, the ward and mariage of *Titius* on na wayis pertenis to *Cornelius*, bot becumis in the ſuperiouris handis, and may be uſit and diſponit be him at his pleaſour. 3 *Decemb.* 1556, Machou Steuart *contra* Johne Briſbane *and* Johne Hamiltoun, 1 *vol. c.* 749.

C. V. The mariage of the air of blanche or of few landis pertenis to himſelf.

GIF ane air of blanche landis be within perfeit age, and thairfoir he, and his landis that ar haldin blanche farm *in ſoccagio*, be in the keiping of his kinniſman, the keipar may not give nor ſell his mariage bot to his awin advantage, proffeit and utilitie, *Leg. Foreſt. c.* 72. And thairfoir ane air of blanche landis, being of les or perfeit age, may marie quhen and quhair he pleaſis, without licence or conſent of his ſuperiour; becauſe for blanche landis na ſuperiour hes richt to the mariage of his fré tenent or vaſſall. And ſiclike, is

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to be underſtuid of few landis, except ſpecial proviſioun in the contrare be maid and contenit in his infeftment, 16 *Mart.* 1548, *S.* William Hamiltoun *contra N.* 2 *t. c.* 240. For it is to wit, gif ony man hald his landis in few-ferme, payand thairfoir his few-maill, with his mariage, quhen it ſall happin, albeit his landis may on na wayis fall in the ſuperiouris handis be reſſoun of ward, zit the mariage of him and his airis aucht and ſould pertene to his ſuperiour, like as gif his landis war haldin be ſervice of ward and releif. 22 *Mart.* 1537, *The King contra* David Abircrombie, 1 *t. c.* 497.

C. VI. Mariage of ane air, havand divers over-lordis.

GIF ony air beand minor, have ſum ward landis pertening to him be reſſoun of his father, haldin in cheif of ane over-lord, and ſum uther ward landis pertening to him be his mother, and haldin of ane uther over-lord; his mariage pertenis to the over-lord of quhom the air's predeceſſour was firſt infeft, not havand reſpect or conſideratioun quhidder the over-lord be male or female, or zit to the quantitie of the landis, bot allanerlie to the eldeſt infeftment be ſervice of ward, *Leg. foreſt. c.* 76. *De jud. c.* 119. Attour, gif divers and ſindrie perſounis alledgeand thame to have richt and titill as ſuperiouris, or as donatouris to the ſuperiour, to the mariage of ony heritour, the air may rais letteris fra the Lordis of ſeſſioun, and ſummound thame to heir and ſé it decernit be the ſaidis Lordis to quhom the richt and titill dois pertene. 3 *Decemb.* 1556, Mathou Steuart *contra* Johne Brisbane *and* Johne Hamiltoun, 1 *t. c.* 748.

C. VII. The mariage of ane air, haldand land of the King and of the kirk.

ANE fré tenent haldand landis be ſervice of ward and releif of the Kirk, and als uther landis, be the ſamin maner and form of halding of the King, his mariage pertenis to the King, albeit he hald ane greater quantitie of landis of the kirk than of the King. 27 *Auguſt.* 1540, 1 *t. c.* 1050.

C. VIII. In quhat cais the mariage of the air pertenis not to the ſuperiour.

GIF ony man deceiſſis, haldand landis of his ſuperiour be ſervice of ward and releif, and leivis behind him ane air, the mariage of the air on na wayis pertenis to the ſuperiour, gif he was infeft or put in fie of the landis befoir the deceis of the predeceſſour, or zit befoir the time of the diſpoſitioun of the mariage maid be the ſuperiour, gif ony was maid be him thairanent. 11 *Decemb.* 1528, *Priour of* Pluſcardie *contra* Walter Barclay *of that ilk*, 1 *t. c.* 346.

C. IX. Of ane air within fourtene zeiris of age maryit without the ſuperiouris conſent.

ITEM, Concerning airis that ar within fourtene zeiris of age, and ar led away, with-haldin or maryit be thair freindis, or ony uther, without conſent of thair over-lord, it is provydit, that quhatſumever laique man beis convict thairof, he ſall pay the retour of the mariage to him that is ſkaithit thairby: And gif the air be maryit, his bodie ſall be tane and impreſonit until he have recompenſit him that hes entres thairto, and farder, until he have maid ſatisfactioun for the fault committit be him to the King. *Leg. foreſt. c.* 65.

C. X. Of ane air of fourtene zeiris of age, maryit without his ſuperiouris conſent.

ITEM, Gif ane air, beand fourtene zeiris auld, or abone, untill his perfeit age, marie without licence of his over-lord, to defraud him of the maritage, and his over-lord offer him reſſonabill and convenient mariage, without diſparagement, then his over-lord may hald

hald the landis pertening to the air, efter his perfeit age of twentie ane zeiris, ſa lang, that he may reſſave the double valour of the mariage, efter the eſtimatioun of honeſt and lauchful men, or efter as it has bene offerit him of befoir for the ſaid mariage, without fraud or colluſioun, and efter as it may be provin in the Kingis court. *Leg. foreſt. c.* 65.

C. XI. Ane air maryit in diſparagement.

GIF ane over-lord maryis airis, male or female, in thair ward, to husbandmen being villanis, or to utheris, as burgeſſis, quhairby the air is diſparagit, gif the air be within fourtene zeiris of age, ſwa that he cannot conſent thairto, then, gif his freindis complene thairof, the Lord ſall tyne and foirfault the ward unto the perfeit age of the air, and the proffeitis thairof ſall be convertit to the uſe of the air, being within age, efter the diſcretioun and proviſioun of his freindis, for the ſchame done to him: Bot gif the air be of the age of fourtene zeir or elder, ſwa that he may give his conſent to mariage, and gevis conſent to ſic mariage, na pane ſall follow nor be askit of him thairfoir. *Leg. foreſt. c.* 66.

C. XII. Of airis requirit to marie, and refuſand.

GIF the air, of quhat eſtait ſa ever he be, will not marie at the requeſt of his over-lord, he ſall not be compellit thairto; bot quhen he cumis to perfeit age, he ſall give and pay to his over-lord als mekle as ony wald have gevin him for the ſamin mariage; and untill he do the ſamin, his over-lord may not be compellit to mak reſtitutioun of his heritage to him; for of the law and conſuetude of this realme, the mariage of ane air within age pertenis to the over-lord of his landis and heritage. *Leg. foreſt. c.* 67.

C. XIII. The form of the requiſitioun of ane air to marie.

GIF the mariage of ane air or heretrix be fallin in the ſuperiouris handis, and the air being lauchfullie requirit be the ſuperiour, or his donatour, or be ony uther cled with his richt, to marie ony partie aggreabill offerit to him, refuſis to do the ſamin, and maryis ony uther perſoun, without licence or conſent of the ſuperiour, or his donatour, he aucht and ſould not onlie pay the ſingle avail of his mariage, bot alſua the doubill thairof, that is, als mekle agane as the ſingle, to be modifyit and taxt be the Judge, efter the zeirlie rental, avail and quantitie of the landis and living pertening to the air: And it is to wit, that the ſamin requiſitioun ſall be maid in this maner, *viz.* the ſuperiour, his donatour, or the aſſignay maid and conſtitute be the donatour, or ony uther perſoun havand richt thairto, aucht and ſould, be himſelf, or be his lauchful procuratour havand ſpecial powar to that effect, offer to the air perſonallie apprehendit, then being of lauchful age for mariage, ane aggreabill partie, expremand the ſaid perſounis name and ſirname, without diſparagement to him, ſiclike beand of lauchful age, and convenient for mariage, and require the ſaid air to ſolemnize and compleit the band of matrimonie in face of halie kirk, with the perſoun that is offerit; and for compleiting thairof aſſign and affix ane lauchful day, to wit, the ſpace of threttie dayis at the leiſt, to him, to compleit the ſamin within ane kirk appointit to him to that effect, and in the mean time of the ſaid requiſitioun, or zit befoir or efter the ſamin, the donatour, or ony uther aſſignay havand richt and titill of him, or of the ſuperiour, (for the ſuperiour himſelf neidis not

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to mak ony intimatioun of his richt and titill, he beand notourlie knawin to be ſuperiour) ſould mak be himſelf, or be his procuratour, intimatioun of the richt and diſpoſitioun maid to him: And, gif he be aſſignay, of the richt and titill maid and gevin to his author, with quhais richt he is cled, and ſchew the ſamin opin and patent in preſence of the ſaid air, and caus the ſamin be red befoir him, or give or offer him ane copie thairof, to the effect that he thairefter may not pretend ignorance thairanent; and thairefter the ſaid perſoun, *viz.* the ſuperiour, or ony uther cled with his richt, be quhom or in quhais name the ſaid requiſitioun is maid, aucht and ſould perſonallie, or be his procuratour, compeir at the day and kirk appointit of befoir, bringand with him the ſaid partie in proper perſoun, readie and willing to marie him quha was offerit in mariage; and thair, in lauchful time, befoir tuelf houris of the day, offer him readie to accompliſh and fulfill that quhilk he offerit and requirit to be done of befoir, and to that effect thair to remane quhill divine ſervice be done, or quhill ane hour efter noon: And gif the air compeiris not, or compeiris and refuſis to marie, he ſould tak inſtrumentis thairupon in the handis of ane ſufficient Notar; for the refuſe maid be the air, or his non-compeirance, or the offer of the aggreabill partie, togidder with the intimatioun foirſaid, may not be provin be witneſſis, bot be writ. *Pen. Feb.* 1567, *The Laird of* Drumlanrig *contra* Marion Carutheris. 21 *Junij*, 1569, William *Lord* Forbes *contra the Laird of* Boyne. *Ult. Julij*, 1562, Catherine Somerville *contra* William Baillie *of* Lamingtoun. 4 *Junij*, 1575, *Laird of* Glenbervie *contra Laird of* Udny, *c.* 887.

C. XIV. The ſingle avail of the mariage allanerlie may be cravit fra the air quha maryis befoir he be requirit.

ANE air quhais mariage pertenis to his ſuperiour, maryand at his awin pleaſour, without the conſent of his ſuperiour, befoir he be lauchfullie requirit to marie, and ane agreabill partie offerit to him be his ſuperiour, or ony uther cled with his richt, aucht and ſould allanerlie pay the ſingle avail of his mariage. And it is to wit, that he ſould be requirit be him that hes the richt of his mariage, or be his procuratour, havand ſufficient powar and mandat to that effect; for gif he be requirit to marie, and to reſſave ane aggreabill partie be ane Actornay, the ſamin warning is not ſufficient of the law and conſuetude of this realme. 8 *Maij*, 1559, *Lord* Erskine *contra heritour of* Polmais, 1 *t. c.* 772. 23 *Mart.* 1529, *The King and the Erle of* Rothes *contra* Johne Kinnaird *of that ilk*, 1 *t. c.* 299.

C. XV. The air maryit, his predeceſſour beand on death-bed, ſould pay the ſingle avail of the mariage.

GIF ony man haldand land be ſervice of ward and releif of his ſuperiour, happin to contract or marie his ſone and air on his death-bed, intending thairby to defraud the ſuperiour of the proffeit of his air's mariage, and he happin to deceis of the ſamin ſeiknes, being veſt and ſaiſit in the landis; his air, efter his deceis, ſall nevertheles content and pay to the ſaid ſuperiour the ſingle avail allanerlie of his mariage, 7 *Mart.* 1488, *The King contra* William Cairnis, *nevoy and air to umquhile* John Cairnis; becauſe his predeceſſour held his landis be ſervice of ward and releif, as ſaid is, and deceiſt ſaiſit in the ſamin, and thairfoir the proffeit of his airis mariage wald have pertenit to his ſuperiour throw his deceis, gif he had not fraudfullie contractit the ſamin upon his death-bed. 12 *Junij*, 1534, *The King contra* James Sandilandis *of* Sainctmonanis, 1 *t. c.* 84.

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C. XVI. The ſimple avail may not be askit fra the air untill he be enterit.

GIF ane air of ward landis being of les agè marie without licence of the King, or his uther ſuperiouris, na requiſitioun or offer of ane aggreabill partie beand maid to him befoir his mariage, he may not be callit nor decernit to pay the ſingle avail of his mariage, unto the time he be enterit air; becauſe during the time of the ward, and of his minoritie, he may not enter, nor zit is he air of ony landis to his predeceſſour; and it may happin him to deceis unenterit befoir the iſche of the ward, and ſwa gif he not beand enterit war compellit to pay the avail of his mariage, he deceſſand unmaryit, the King, or uther ſuperiour, ſould wrangouſlie have the ſingle avail of his mariage, and als the mariage of the immediat ſucceſſour, quha ſould happin to ſuccede efter him to his predeceſſour, be quhais deceis the ward of the land, and the mariage of the air, came in the ſuperiouris handis; and ſwa the ſuperiour, be deceis of ane vaſſal, micht have the avail and proffeit of twa airis mariage, howbeit they never ſucceidit nor enterit to the land; quhilk is contrare to all law of this realme, and reaſon, conſidering the ſuperiour ſould have bot the mariage of ane air of ward landis allanerlie. 16 *Mart.* 1548, *S.* William Hamiltoun *the Quenis Grace's donatour* contra *N.* 2 *t. c.* 202.

C. XVII. Exceptiounis aganis the perſounis offerit to the air in mariage quhen to be proponit.

GIF ony perſoun havand the richt of ony air's mariage, offeris him ane partie, and the air refuſis or poſtponis to marie the partie offerit, and thairfoir be callit and perſewit befoir ane Judge for the avail of his mariage, he aucht not, nor ſould not be heard to uſe or propone ony exceptioun aganis the inhabilitie of the perſoun offerit; becauſe he ſould have proponit and uſit the ſamin the day aſſignit be the contract to him to marie. 21 *Mart.* 1530, Johne Campbell *contra* Jonet Cathcart, 1 *t. c.* 310.

C. XVIII. The air beand of perfeit age may be compellit to enter, and to pay the avail of his mariage.

GIF ane air of ward landis be of perfeit age to enter, and may enter to his landis, quhidder he be maryit or unmaryit, and chargit, refuſis to marie, he may be chargit be his ſuperiour to enter to his landis, to the effect that he may get the avail of the mariage, with certificatioun to him and he failzie, he ſall be haldin to pay the ſamin ſiclike as gif he wer enterit. 16 *Maij*, 1548, *S.* William Hammiltoun *contra N.* 2 *t. c.* 203.

C. XIX. Of ane air refuſand or poſtponand mariage efter his ſuperiouris deſire.

GIF ony perſoun, haldand his landis be ſervice of ward and releif of ony over-lord, happinis to deceis, leivand behind him ane air, quhais mariage pertenis to the over-lord or ſuperiour, the over-lord may require the ſaid air, beand habile and of perfeit age, to marie without diſparagement, and offer to him ane partie, conform to the lawis of this realme; the quhilk gif the ſaid air refuſis to do, and ſchawis na reſſonabill cauſe quhy he aucht nor ſould not do the ſamin, bot delayis and poſtponis, he may be compellit in judgment to content and pay to the ſaid over-lord the ſingle avail of his mariage, and not the leſs, gif it ſall happin the ſaid air heirefter to marie without conſent of his over-lord, he ſall be haldin to pay the doubill avail of his mariage, to wit, als mekle as he payit of befoir. 6 *Decemb.* 1489, 1494, *The Comitiſſe of* Roſs *contra* Johne Tarbet *of that ilk*, 1 *t. c.* 48.

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C. XX. Of reiving and away taking of airis.

IT is ſtatute, tuiching airis male or female, quhais mariage pertenis to ony man, and quha ar raviſhit and led away be ane uther, that the raviſher ſall be puniſt for his treſpas, be impriſounment for twa zeiris, gif he had na richt nor titill to that mariage, albeit he redeliverit efterward the air unmaryit, or zit maryis him, and makis ſatisfactioun for his mariage: And gif he reſtoir not the air agane, nor zit maryis him at ſic time and zeiris as he is habile for mariage, and may not guidlie mak ſatisfactioun thairfoir, he ſall be puniſt with perpetual baniſhment, or perpetual impriſounment. *Leg. foreſt. c.* 79.

C. XXI. The father may not give in mariage his dochter, ane heretrix, without conſent of his over-lord.

GIF ony man, havand na air bot ane dochter or dochteris, maryis thame without conſent of his over-lord, be the law and conſuetude of this realme, he foirfaltis and tynis his heritage, and may be perpetuallie diſheriſhit thairfoir, ſwa that he ſall retene na part thairof, bot at the will and pleaſour of the over-lord; becauſe, ſeing the ſaid womanis husband is obliſt to mak homage to the over-lord for the landis and tenementis pertening to hir in propertie, the over-lordis conſent ſould be askit and requirit in the ſaid mariage, to the effect that the over-lord be not compellit to reſſave homage for landis pertening to him in tenandrie fra ony man that is his enemie, or inſufficient, and not qualifyit: Bot quhen the tenent askis licence fra his over-lord to marie his dochter with ony man, the over-lord is obliſt to conſent thairto, or to ſchew ane reſſonabill cauſe quhy he ſould not do the ſamin; the quhilk gif he failzeis to do, the woman, without his will and conſent, may frelie marie with hir fatheris licence and counſall, *Lib.* 2. *c.* 49. Attour, ane woman beand ane heretrix of ward landis, quha is anis maryit, and thairefter becumis ane widow, be deceis of hir huſband, is bund and obliſt to require the conſent of hir over-lord in hir ſecund mariage, for the cauſe and reſſoun foirſaid, *Lib.* 2. *c.* 50. *De judic. c.* 125. And ſiclike, albeit he that maryis ony woman havand landis pertening to hir be reſſoun of dowrie or tierce, is not the les not obliſt to mak ony homage thairfoir, bot fealtie allanerlie, nevertheles he may not lauchfullie marie the ſaid woman without the conſent of hir firſt husbandis air or ſucceſſour, being proprietar of the ſaid tierce; for gif the ſaid woman marie without his conſent, ſcho tynis and foirfaltis hir dowrie, except ſcho have ſum uther landis gevin to hir in mariage, or pertening to hir in heritage; for in this cais it is ſufficient that hir principal and cheif over-lord conſent to hir mariage; for quhen ane woman haldis landis of divers over-lordis, ſcho is obliſt allanerlie to ſeik the principal over-lordis conſent in hir mariage, the quhilk is kept and obſervit in dowrie and tierce, not be reſſoun of ony homage, bot in reſpect of fealtie, the quhilk the ſaid womanis huſband ſould mak, as ſaid is. *Lib.* 2. *c.* 49. *De jud. c.* 125.

C. XXII. Of ane heretrix of ward-landis.

GIF the mariage of ony heretrix pertenis to the over-lord, and ony uther perſoun intromettis with hir, and, beand requirit, will not deliver hir to hir ſuperiour, to be maryit with his conſent conform to the lawis of this realme, bot maryis hir without his conſent or will, he may be callit and decernit to content and pay to the ſuperiour the avail and quantitie of hir maritage, quhilk he micht have

had gif ſcho had bene deliverit to him fré unmaryit, and that eſter the modificatioun and diſcretioun of ane Judge. 5 *Julij*, 1524. *Lord* Fleming *contra the Laird of* Drummelzear, 1 *t. c.* 636.

Anent ward and keiping of airis.

C. I. Of the firſt beginning of ward.

KING *Malcolme Mackenneth* gave and diſtributit all his landis of the realme of *Scotland* to his ſubjectis, and held na part thairof to himſelf in propertie, except the royall dignitie, and the *Mute-hill* of *Scone*; and at that time all Baronis gave and grantit to him, for his ſuſtentatioun and maintenance, the ward of all and ſindrie landis pertening to the air of quhatſumever Baron that fall happin to deceis. *Leg.* Malcolm. Macken. *c.* 1.

C. II. Quhat time the over-lord may ſeik the ward.

GIF ony perſoun deceis, leivand behind him ane air within age, the over-lord of the landis pertening to him, hes na richt nor titill to the keiping nor ward of the heritage, until he firſt have reſſavit homage of the air. *Lib.* 2. *c.* 69.

C. III. The keiping of the airis of thame that haldis landis in blanche or burgage.

GIF the air be ane burges, or ony uther perſoun haldand his landis frelie, without ony ſervice, in blanche-ferme, payand nathing thairfoir, except fealtie and reverence to the over-lord, ane diſtinctioun is to be obſervit anent his ward and keiping; for gif the heritage movis and pertenis to him be reſſoun of his father, the ward and keiping thairof pertenis to his narreſt kinniſman of the fatheris ſide, and the keiping of the air to the narreſt kinniſman of the motheris ſide: Bot gif the heritage deſcendis to him be reſſoun of his mother, the keiping thairof pertenis to the narreſt of the motheris ſide, and the keiping of the air to the narreſt of the fatheris ſide; becauſe the air ſould never be in keiping of him quha may clame ony richt or titill to the heritage, as narreſt and lauchful air thairto, failzieing the ſaid air. *Lib.* 2. *c.* 47.

C. IV. Of the keiping of ane burges air.

GIF it happin ane burges to deceis, his air, togidder with the movabill gudis, ſould be in keiping of his kinniſman be the motheris ſide, and all his heritage in the keiping of the kinniſman be the fatheris ſide. *Leg. burg. c.* 104. *De jud. c.* 120.

C. V. Of the keiping of ane heretrix.

GIF ony woman beand ane heretrix be within perfeit age, ſcho ſould remane in the ward and keiping of hir ſuperiour, ay and quhill ſcho be of perfeit age; and quhen ſcho, or thay (gif thay be ma nor ane) is of perfeit age, the over-lord ſould give thame in mariage, gevand to ilk ane of thame thair awin juſt part of the heritage. *Lib.* 2. *c.* 48. *De jud. c.* 120.

C. VI. The ward of ane air havand ſindrie over-lordis.

GIF ane air within perfeit age, and fallin in ward, have divers and ſindrie over-lordis, his mariage and ward pertenis to his principal and cheif over-lord, *viz.* to him quhom to the ſaid air, or his predeceſſour maid firſt liege homage, or of quhom thay held firſt thair landis and heritage, and the remanent over-lordis ſall have ilk ane the ward allanerlie of the landis that ar haldin of thame in cheif, togidder with the releif thairof, and uther juſt ſervice aucht to thame,

thame, *De jud. c.* 124. *Lib.* 2. *c.* 44. Bot gif ony tenent hald land of the King in cheif, his ward and mariage pertenis to the King allanerlie, quhidder he have ony uther over-lord or not; for the King may have na Peir within this realme, and far les ane of greiter powar or richt; and nevertheles, gif ony man haldis landis in fré burgage of the King, and uther landis of ane uther ſuperiour in cheif, the King ſould not be preferrit, be vertue of the burgage, to the uther ſuperiour; for the ward and mariage of the air, quhen it ſall happin, pertenis not to his grace, bot to the uther over-lord. *Lib.* 2. *c.* 43. *De jud. c.* 131.

C. VII. The powar of the over-lord is anent the ward of thair tenentis.

THE over-lord hes full richt and powar anent the keiping and ward of the airis of thair tenentis that happinis to deceis, haldand landis of thame in cheif; and ſwa the over-lord, as wardour, may preſent ane qualifyit perſoun to all kirkis and benefices pertening to the air as patron, and that ſall happin to vaik induring the time of the ward: And likewayis thay may diſpone upon the mariage of all airis and heretrices that ſall happin to fall in thair handis the time of the ward, and may uſe, diſpone and give all thingis pertening to the air, and fallin in ward, in the ſamin maner as thay micht do thair awin proper gudis and geir; nevertheles thay may not put away, diſpone nor annalzie *ad remanentiam* ony part of the heritage pertening to the air, nor zit waiſt, deſtroy, nor mak the ſamin worſe, ſuppois thay may diſpone upon the ſamin heritage, or ony part thairof, for all the dayis and termis of the ward; ſwa that in the mean time of the ward the over-lord ſall nouriſh and ſuſtene the air, conform to his eſtait and degré; and alſo he ſould, efter the quantitie of the heritage, and time of the ward, pay in name and behalf of the air that is in ward, the debtis that the deid his predeceſſour was auchtand, *Lib.* 2. *c.* 42. *De jud. c.* 123. For the over-lord and wardour is obliſt to reſtoir and deliver agane to the air his heritage fré and quyte fra debtis, effeirand to the time of the ward, and quantitie of the heritage, *Lib.* 2. *c.* 44. *Item*, The wardour ſould reule, governe, and do all affairis concerning the air, and ſould perſew in judgment all actiounis and pleyis proffitabill and commodious to the air: Bot gif the air be perſewit, the wardour may not be compellit to anſwer for him, nather tuiching his heritage, nor ground richt thairof, nor tuiching ſaſine, poſſeſſioun, or diſſaſine. And gif ony over-lord, beand minor, hes the ward and keiping of ane air, being alſo minor, and the ſaid over-lord refuſis and poſtponis to reſtoir and deliver agane to him his heritage, he beand come to perfeit age; the ſaid over-lord, albeit he be as zit minor, may be compellit be the law to mak reſtitutioun thairof; for in this cais the privilege of his minoritie helpis him not, bot he, notwithſtanding the ſamin, may be perſewit, and ſould anſwer heiranent, *De jud. c.* 123. *Lib.* 2. *c.* 43.

C. VIII. Powar and office of over-lordis anent airis of landis haldin utherwayis than be ſervice of ward.

ITEM, It is ſtatute, that gif landis haldin utherwayis than be ſervice of ward and releif (*in ſoccagio*) be in the keiping of the freindis of the air, be reſſoun of the airis les age, the keipar ſall mak na waiſt, deſtructioun nor alienatioun of the ſamin, bot ſall keip thame faiflie to the uſe of the ſaid air, ſwa that quhen the air cumis to lauchful age, the keipar ſall mak lauchful compt and rekning

ning to him of the iſſues and proffeitis of the heritage, deducting to the keipar his reſſonabill and neceſſare coiſtis, expenſis and ſuſtentatioun, *Leg. Foreſt. c.* 72. And becauſe ſic ar not properlie keiparis, bot rather ſervandis, ſubject to give compt and rekning of thair adminiſtratioun, thay ſould find ſufficient pledgis and cautioneris, that all the proffeitis and emolumentis of the heritage ſall be furthcumand to the uſe and weill of the air, quhen he cumis to perfeit age, at the ſicht of the over-lord. *De actornat. c.* 1.

C. IX. The ſuperiour may remove the tenentis of ward landis.

LANDIS fallin in ward, the ſuperiour thairof, or his donatour, havand the ſamin in his handis be reſſoun of ward, may warn the tenentis and occupyaris of the ſamin landis to flit and remove thairfra, to be bruikit, joiſit, labourit and manurit be him, notwithſtanding ony titill maid to them be the heritabill poſſeſſour that laſt deceiſt. *Ult. Julij*, 1563, Williame Fraſer *contra* Alexander Chiſholme. 18 *Maij*, 1564, *Laird of* Cambuſnethan *contra* Pa. Lyne *and utheris*, 1 *t. c.* 422.

C. X. The pertinentis and acceſſouris fallis in ward and non-entres with the landis.

LANDIS or baronie fallin in ward or non-entres, all offices, caſtellis, touris, fortalices, woddis, milnis, tenentis, tenandries, ſervice of fré tenentis, advocatiounis and donatiounis of kirkis, benefices, hoſpitallis, chaplanries, with all uther partis, pendicles or pertinentis of the ſamin landis or baronie, cumis in like maner in ward and non-entres, *Ult. Julij*, 1563, *The Erle of* Murray *contra the heritabill poſſeſſouris of the earldom of* Buchane, 1 *t. c.* 134. And thairfoir the ſuperiour hes the keiping of the principal tour and fortalice, which, with all uther houſis and biggingis being upon the ward landis, and pertening to the pupill, ſould be deliverit to the ſuperiour, his donatour, or his ceſſioner and aſſignay, to be kept be him during the time of the ward, and ſould not be in the keiping of the tutor teſtamentar, or ony uther. 13 *Feb.* 1558, William Fraſer *contra Lady* Lovat, 1 *t. c.* 1225.

C. XI. Anent the patronage of kirkis.

ITEM, Gif the King gevis and diſponis the ward of ane air to ane donatour, with full powar, in ſic ſort that he ſall not be bund and obliſt to give compt and rekning thairfoir in the chekkar, or utherwayis; the donatour hes gude titill and richt to the donatioun of kirkis fallin alſo in ward, and vaikand the time thairof, and may diſpone upon all gudis and geir, or uther thingis pertening to the air, as he may do upon his awin, *Lib.* 2. *c.* 46. *De jud. c.* 124. *Item*, Gif ony landis happinis to fall in the ſuperiouris handis be reſſoun of ward, havand donatioun or advocatioun of ony kirk or benefice annext thairto; and gif it happinis the ſaid kirk or benefice to vaik during the time of the ward, the ſuperiour of the ſaidis landis hes full richt and powar to preſent ane qualifyit perſoun to the ſaid kirk or benefice, to bruik and joiſe the ſamin for all the dayis of his lifetime: And gif the heritour of the ſaidis landis preſentis ony perſoun, the ſamin is null and of nane avail, force nor effect, and na wayis can prejudge the ſaid ſuperiour. 16 *Maij*, 1491, *The Lord* Glamis, *donatour to the King*, contra *Lord* Forbes, 1 *t. c.* 69.

C. XII. The proffeitis onlie of ward

LANDIS haldin be ward and releif of ony ſuperiour, ſpiritual or

or temporal, within this realme, and thairefter ſet in few-ferme, conform to the ordinance and licence grantit be the act of parliament, gif the ſamin happin to fall in ward or non-entrie in the ſuperiouris handis, he may crave na mair profeitis or dewteis thairfoir, bot the few-maill allanerlie, or at the maiſt the retourit maillis, to the quhilk the ſaidis landis ar retourit, 18 *Maij*, 1563, *M.* Jo. Gledſtanis *contra* Andro Libertoun, 1 *t. c.* 806. *Item*, Landis fallin in the ſuperiouris handis be reſſoun of ward, he may clame na mair profeit nor dewtie thairof than the retourit maill of the ſamin. 16 *Decemb.* 1528, Ninian Seytoun *of* Tulliebodie *contra* Elizabeth Steuart, 1 *t. c.* 350.

landis, being ſet in few, pertenis to the ſuperiour.

C. XIII.

WARD and non-entres ar repugnant, and cannot ſtand togidder, and thairfoir landis being in ward be reſſoun of the les age of the air, cannot at the ſamin time be in non-entres: And gif the ſuperiour call and perſew his tenent to heir and ſé his landis decernit to be in non-entres, be ane certane time and ſpace of zeiris, and it be of veritie that the landis wer in ward induring ſome of the ſaidis zeiris; the ſamin aucht and ſould be deducit and defalkit fra the zeiris of non-entres, ſwa that ilk ſpace ſould have the awin effect, *viz.* the zeiris of ward ſould be underſtuid the zeiris of ward, and the remanent zeiris of non-entres ſould be underſtuid of non-entres; becauſe the zeiris and termis of the ward ſould not be comptit and reknit amang the zeiris of non-entres, 24 *Maij*, 1541. 28 *Junij*, 1551. 16 *Decemb.* 1555. *The Quene* contra *Laird of* Durie *and utheris*, 1 *t. c.* 105. *Item*, Gif ony man haldand landis be ſervice of ward and relief, deceiſſis, leivand behind him airis female allanerlie, of ſax or ſevin zeiris of age, gif ony perſoun clame the landis to pertene to him be reſſoun of non-entres, ſen the deceis of ony predeceſſour, as guidſchir or grandſchir to him that is deceiſt, the ſamin landis, fra the time of his deceis unto the time of the perfeit age of the airis female, *viz.* fourtene zeiris compleit, aucht and ſould be decernit to have bene in ward be reſſoun of the minoritie of the air, and thairfoir on na wayis can be decernit to be at the ſamin time in non-entres. 7 *Feb.* 1566, *Lord* Fleming *contra Lord* Roſs, 1 *t. c.* 1374.

Landis beand in ward cannot be at the ſamin time in non-entres.

C. XIV.

Gif ony man haldis landis be ſervice of ward and releif, and annalzeis heritablie the ſamin, or ony part thairof, to be haldin of him and his airis in blanche farm, or utherwayis, and thairefter it happin him to deceis, and thairthrow his landis to fall in ward in the ſuperiouris handis; the ſaidis landis annalzeit be him in his lifetime cumis in like maner in ward in the ſuperiouris handis; becauſe the ſuperiour is not bund and obliſt to acknawlege ony perſoun bot his immediat tenent allanerlie. 3 *Mart.* 1563, *The Erle of* Murray *contra the Lord* Ruthven, 1 *t. c.* 1314.

Alienatiounis maid be the tenent prejudgis not the over-lord anent the ward, except he conſent thairto.

C. XV.

GIF ony perſoun be infeft in ane annuelrent, to be uptakin and upliftit be him out of ane uther manis landis, and it happin the ſamin landis to cum in the ſuperiouris handis be reſſoun of ward, the ſuperiour aucht and ſould have the ſaidis landis, without payment of the annuel, ſa lang as thay ar in ward, except he to quhom the annuel is auchtand ſchew confirmatioun gevin and grantit to him

Anent the annualrent of landis fallin in ward.

be the ſaid over-lord, ratifyand and confirmand his infeftment of the ſaid annuelrent. 28 *Junij*, 1480, Robert Lauder *of* Baſs *contra* John Fentoun, 1 *t. c.* 28.

C. XVI. The ſuperiour may not be hurt anent his richt of the ward, without his awin conſent.

GIF the immediat vaſſal or tenent, haldand landis in cheif of ony ſuperiour, be ſervice of ward and releif, happinis to deceis, leivand behind him ane air of les age, the ſamin landis fallis in the ſuperiouris handis be reſſoun of ward, to be bruikit and joiſit be him untill the air that ſall happin to ſucceid to the ſaid tenent or vaſſal be of lauchful age: Bot gif the ſaid tenent denudit himſelf in his lifetime of the propertie of the landis, with conſent of his ſuperiour, the ſamin landis may on na ways, be his deceis, fall in the ſuperiouris handis; bot contrary wayis, gif he maid, befoir his deceis, ony diſpoſitioun thairof to ony perſoun, without licence, conſent or confirmatioun of the ſuperiour, the ſamin is not prejudicial to the ſuperiour anent his richt to the ward of the ſaidis landis, becauſe he conſentit not thairto. 18 *Maij*, 1564, *The Laird of* Cambuſnethane *contra* Patrik Lyne, 1 *t. c.* 823.

C. XVII. The curteſie of *Scotland* ſtoppis landis to fall in ward.

GIF ony man maryis ane heretrix of landis, he aucht and ſould, efter hir deceis, bruik and joiſe the ſamin during his lifetime, be reſſoun of the curteſie of this realme; and the ſamin landis may on na wayis, during the ſpace foirſaid, fall in the ſuperiouris handis be reſſoun of ward, notwithſtanding that the heritour thairof be of les age the time of the deceis of his mother. *Pen. Feb.* 1553, George Gorthie *contra Lord* Methven, 1 *t. c.* 730.

C. XVIII. At quhat time the ward of airis endis.

ANE air, togidder with his heritage, is and remanis in the keiping and ward of his over-lord, ay and quhill he be of perfeit age, *Lib.* 2. *c.* 69. *De jud. c.* 26. And gif thair be ony queſtioun or doubt anent the age of the air, the over-lord ſall retene in his keiping baith the air and his heritage, until the air be knawin to be of perfeit age, be the aith of leill and ſufficient men and nichtbouris, *Lib.* 2. *c.* 44. *Item*, Ane woman beand ane heretrix, ſall remane in the keiping of hir over-lord, until ſcho be maryit and cled with ane husband, with his counſall and conſent, quhidder ſcho be within age, or of perfeit age, *De jud. c.* 65. Becauſe be the law of this realme na woman may marie without hir over-lordis conſent, *Lib.* 2. *c.* 48.

C. XIX. The keiping of natural fulis and idiotis.

THE keiping and ward of landis and tenementis pertening to natural fulis and idiotis, ſould pertene to the King, togidder with the profeitis and dewteis thairof, induring the ſaid fule and idiotis lifetime; and his Grace may not waiſt nor deſtroy the ſamin, bot ſould ſuſtene the ſaid fule or idiot, and give him his neceſſar expenſis of the ſaidis landis, albeit the ſamin be ward landis or uther: Bot the ſaid fule or idiot may on na wayis ſell or annalzie the ſaidis landis, nor ony part thairof, for the ſamin ſould be furthcumand, efter his deceis, to the richteous and lauchful air. *Lib.* 2. *c.* 46.

Anent

Anent releif of airis.

KING MALCOLME MACKENNETH gave and diſtributit all his landis of the realme of *Scotland* to his ſubjectis, and held na part thairof to himſelf in propertie, except the royall dignitie, and *Mute-hill* of *Scone*; and at that time all Baronis gave and grantit to him for his ſuſtentatioun and mantenance, the releif of all airis of quhatſumever Baron that ſould happin thairefter to deceis. *LL. Malcol. Macken. c.* 1. C. I. The original of releif.

QUHEN ony Erle, Baron, or ony uther frehalder of ward landis deceiſſis, leivand behind him ane air of lauchful and perfeit age, gif the air aw ony releif to his over-lord, he ſould have and recover his heritage, makand ſufficient payment thairof, *Leg. Foreſt. c.* 74. *Item*, The releif of ony landis haldin in blanche ferm is the double of the blanche ferm. The releif of ward landis is the zeirlie rent of the landis as thay gave in the time of peace, the quhilk dewtie ſould be conſiderit, efter the valour and profeit of the landis, quhilkis thay gave at the time of the giving of the ſaſine to the air. The releif of few landis is the double of the few-maill; and landis gevin and mortifyit to the kirk in name of perpetual and fré almonis aucht nathing to the ſuperiour bot criſtiane and godlie prayeris. *Quot mod. tenen. terræ de rege.* C. II. The juſt releif of landis.

THAT quhilk ane air aucht and ſould give to his ſuperiour the time that he enteris to his landis, is allanerlie the retourit maillis of the ſaidis landis; and as concerning the remanent maillis and profeitis of the ſaidis landis, by and attour the retourit maill thairof, the ſamin aucht and ſould pertene to the air: Or gif thair be many heretrices female, the ſamin ſould be equallie dividit amangis thame. 23 *Mart.* 1563, *The Laird of* Drumlanark *contra Laird* Cokpuile. C. III. Releif of landis is the retourit maillis.

ANE air of ward landis quha with his landis hes bene ony ſpace in the ſuperiouris handis be reſſoun of ward, quhen he is of perfeit age, ſould have his landis and heritage reſtorit unto him, without payment of ony releif, and that in reſpect of the ward, *Lib.* 2. *c.* 70. *Leg. Foreſt. c.* 74. For it is generallie trew that the ſuperiour may not clame or ask baith the ward and releif of ane air, *Quot mod. tenen. terræ de rege.* And thairfoir gif ony air hes bene in ward be the ſpace of half ane zeir, or ane term allanerlie, he ſould on na wayis be compellit to give ony releif: And gif ane air of ward landis happinis to be in ward ane zeir and ane half, * the releif ſall be ane zeiris rent and ane half of the landis, *Quot mod. tenen. terræ de rege. Item*, Ane air female of ward landis of les age is in the ward of hir over-lord; bot quhen ſcho is cled and maryit with ane husband, nather ſcho nor hir husband is bund to pay ony releif, *Lib.* 2. *c.* 70. And gif, the time of hir father or predeceſſouris deceis, ſcho be not of perfeit age, and zit remane in the ward of hir over-lord be ane certane ſpace, untill ſcho be of perfeit age, he quha maries hir ſall pay ane releif befoir the completing of the mariage; C. IV. Quha ſould pay releif, and quha not.

riage: And gif ony womanis husband pay ane releif, he and ſcho thairby, induring ather of thair lifetimes, ſould be fré fra all farder payment of ony uther releif for that land and heritage: And thairfoir gif the husband deceis, and the woman marie agane, ſcho nor hir ſecund husband aucht na releif; and ſiclike gif the woman deceis, and the man marie ane uther, nather he nor his wife may be compellit to pay ane uther releif, *Lib. 2. c. 70. De jud. c. 65. & 135. Item*, Gif ony man, be concord, or utherwayis, in judgment, obtene and evict landis or tenementis fra ane uther, quha for the ſamin hes alreadie gevin juſt releif; nevertheles he that winneth the pley, and obtenis the landis, may be compellit to pay for the ſamin ane uther releif to the over-lord. *Lib. 2. c. 67. De jud. c. 134. & 65.*

C. V. Anent the releif of him that haldis landis of divers airis female.

GIF ony fré tenent or vaſſal, haldand landis of divers and ſindrie ſiſteris, or utherwayis, airis female, as thair ſuperiouris, he aucht and ſould be enterit thairto be the eldeſt air female allanerlie, and the releif quhilk he payis the time of his entrie, ſould be equallie dividit amang all and haill the ſuperiouris, and on na wayis ſould pertene to the eldeſt hir alane. Elizabeth Fentoun *contra the heretrix of* Dirletoun, 26 *Feb.* 1523, 1 *t. c.* 405.

C. VI. The ſuperiour may poind the occupyaris of the ground for the releif auchtand to him.

THE ſuperiour enterand and reſſavand his fré tenent in and to the landis haldin of him in cheif, may poind the tenentis and occupyaris thairof for ane zeiris mail, as for the releif auchtand to him of his faidis landis; and the ſaidis tenentis beand ſwa poindit be him, ar fré fra payment of ony maillis and dewteis to the ſaid fré tenent thair maſter that zeir, and may on na wayis be poindit or diſtrenzeit thairfoir be him, or ony in his name, 20 *Jan.* 1532, *The Laird of* Calder *contra* Johne Creichtoun, 1 *t. c.* 463. And mairover, gif the tenentis be poindit be divers perſounis, alledgeand thame to have richt thairto, the gudis and geir ſould be reſtorit, to remane in the tenentis handis, ay and quhill cognitioun be takin, quhat the landis ar retourit to, and of the zeirlie mail thairof. 28 *Julij*, 1541, Johne Colquhoun *of the* Glen *contra* Johne Colquhoun *of* Luſſe, 1 *t. c.* 529.

C. VII. The Schiref gevand ſaſine, ſould ask and reſſave cautioun for the releif of the landis.

THE Schiref, or ony uther Judge, to quhom ane precept of ſaſine is direct furth of the chancellarie to give ſaſine of ony land or tenement to ony man, may not poind or diſtreinzie the gudis, geir or landis pertening to him to quhom the ſaſine is gevin, for the releif of the landis contenit in the precept of ſaſine, bot aucht and ſould tak ſovertie and reſponſal cautioun for the ſaid releif; utherwayis gif he takis na ſovertie in contrare the form of the precept direct to him, he is and ſtandis debitour thairfoir to the King, becauſe of negligence. 27 *Aug.* 1504, Pa. Clingſtoun *contra Schiref of* Wigtoun, 1 *t. c.* 207.

C. VIII. The frank-tenementar may not be poindit for the releif.

THE gudis and geir pertening to ony frank-tenementar, or his tenentis, aucht on na wayis to be poindit nor diſtreinzeit for the releif of the ſamin landis. 27 *Aug.* 1504, Patrik Clingſtoun *contra the Schiref of* Wigtoun, 1 *t. c.* 208.

GIF

GIF ony man hes divers and ſindrie townis and landis, nane of thame, nor the occupyaris thairof, may not be poindit nor diſtreinzeit for the releif of the uther, ſpeciallie gif the town and landis quhilk aucht the releif be poindable and ſtreinzeable thairfoir. 22 *Aug.* 1554, William Lauder *contra Schirefs of* Peblis, 1 *t. c.* 738.

C. IX. Ilk town and landis ſould be poindit for the awin releif.

THE air is not oblift to pay releif to his over-lord, untill the over-lord have firſt reſſavit homage of him, *De jud. c.* 138. And gif the over-lord will not reſſave homage nor releif, the air ſould faiſtlie and ſurelie keip the ſamin, and divers times offer it be himſelf, or be ony ſufficient men in his name; the quhilk gif the over-lord zit refuſis, and delayis to reſſave, the air may complene thairanent to the King and his counſall, quha ſall direct letteris to the Schiref for that effect: And gif the over-lord in judgment grantis him to be richteous air, he ſall reſſave his homage and releif, or than appoint ane reſſonabill day at the quhilk he will reſſave the ſamin: And gif he denyis him to be richteous air, and gif the air was veſt and ſaiſit, he ſould patientlie ſuffer and tarie untill it pleiſe his over-lord to reſſave his homage, bot gif he be not faiſit he mon rais ane breve of mortanceſtrie aganis his over-lord. *Lib.* 2. *c.* 72. *De judic. c.* 133.

C. X. Quhen and in quhat maner releif ſould be paid.

Anent non-entres of airis.

GIF ane air of landis be of lauchful age, and thairfoir havand powar to enter to his landis, lyis out un-enterit to the ſamin, the landis ar in non-entres all the time and ſpace that he lyis out un-enterit, and micht have enterit thairto, *propter negligentiam heredis, non recuperantis jus ſuum.* 1 *Feb.* 1554, *The Quene* contra *the Laird of* Durie, 1 *t. c.* 1186.

C. I. Landis fallis in non-entres, be reſſoun the air enteris not, nor obtenis ſaſine of the ſamin.

GIF ony perſounis retour, infeftment, or ſaſine, be lauchfullie reducit, the landis contenit thairin ar in the ſamin eſtait and conditioun as gif the ſamin retour, infeftment or ſaſine had never bene gevin or maid; and thairfoir the ſamin landis ar in the ſuperiouris handis be reſſoun of non-entres, fra the time of the iſche of the laſt ſufficient ſaſine ſtandand zit unreducit, untill the lauchful entrie of ane richteous air to the ſaidis landis, 14 *Feb.* 1554, *The Quene and* Walter Douglas *contra* Ucthrid Macdougall. 6 *Mart.* 1566, Alexander Home *contra* George Cranſtoun, 1 *t. c.* 1185.

C. II. Landis may fall in non-entres be reduction of retour or infeftment.

GIF ony vaſſal or frehalder reſignis the landis in his ſuperiouris handis, in favouris of ony uther perſoun, the ſamin landis or tenement ar in non-entres in the ſuperiouris handis, ay and quhill lauchful ſaſine be takin thairof be vertue of the ſaid reſignatioun or utherwayis, as effeiris. 13 *Mart.* 1502, *The King* contra Henrie Scrogeith, 1 *t. c.* 141.

C. III. Landis may fall in non-entres be reſignatioun in the ſuperiouris handis.

GIF ony over-lord diſpone to ony perſoun the privilege and richt to tranſport men, horſe, gudis or geir, be boit over ony water, gif the

C. IV. Ane ferrie boit may fall in non-entres.

air of the ſaid perſoun to quhom the ſaid richt and privilege was diſponit, be not enterit and ſaiſit thairin, the ſamin richt and privilege fallis in non-entres, as uther landis dois; and the maillis, profeitis and commoditeis of the ſaid boit pertenis to the ſuperiour, during the time of the non-entres. 20 *Novemb.* 1509, *The Abbot of* Aberbrothok *contra Laird of* Roſſie, 1 *t. c.* 157.

C. V. The non-entres of the vaſſallis landis pertenis to the over-lord.

GIF ony Baron deceis within this realme, the King hes gude richt and titill to hald and retene in his poſſeſſioun and handis, all and haill the baronie and landis quhilkis pertenit to him that is deceiſt, ay and quhill it be ſufficientlie knawin be ane inqueiſt quha is richteous air to him, and that he be of perfeit age: And the like richt have all uther over-lordis in and to all landis haldin immediatelie of thame in cheif, be thair tenentis and vaſſallis, *De jud. c.* 133. Becauſe the non-entres of landis pertenis to the narreſt and immediat ſuperiour thairof allanerlie, quhidder he be King, Prelat, Baron, or ony uther perſoun. 3 *Julij*, 1533, 1 *t. c.* 931.

C. VI. Of ane quha annalzeis his landis, and thairefter takis to himſelf the gift of non-entres of the ſamin.

GIF ony man ſellis, annalzeis or diſponis his landis, or ony part thairof to ane uther, to be haldin of himſelf, or of his ſuperiour, and thairefter be abſtracting the ſaſines or evidentis, or be ony uther way, the ſaidis landis fall in the ſuperiouris handis, be reſſoun of non-entres, and the gift thairof be diſponit to him that maid the ſaid diſpoſitioun, or to his uſe, profeit and commoditie, to ony uther perſoun or perſounis, the ſamin gift of non-entres is of nane avail, and aucht and ſould on na wayis hurt or prejudge the ſaidis perſounis to quhom the ſaid alienatioun wes maid of befoir. 17 *Junij*, 1507, Robert Falconer *contra* David Falconer, 1 *t. c.* 269.

C. VII. The landis being in non-entres in the ſuperiouris handis, may on na wayis be annalzeit be him.

LANDIS being in the ſuperiouris handis be reſſoun of non-entres, the ſuperiour may on na wayis diſpone, ſell or annalzie the heritage or propertie thairof fra the richteous air; and gif he dois utherwayis, the ſamin diſpoſitioun is of nane avail, and may be reducit at the inſtance of the richteous air, being ſervit and enterit narreſt and lauchful air to the laſt heritabill poſſeſſour of the ſamin. 18 *Decemb.* 1563, James Douglas *contra* James Ramſay, 1 *t. c.* 812.

C. VIII. Anent tenandreis pertening to ſubtenentis fallin in non-entres.

MENTIOUN is maid of ane act of parliament, beirand in effect, "Quhen ony landis becumis in our ſoverane Lordis handis be reſſoun of non-entres, and it happin his Hienes to diſpone his gift thairof, to his narreſt and immediat tenent of the ſamin, it is provydit that the fré tenentis and vaſſallis thairof ſould enter to thair tenandreis be thair over-lord, thay payand thair part of the compoſitioun gevin be him for the gift of the non-entres of the haill landis." 3 *Feb.* 1540, 1 *t. c.* 1054.

C. IX. The air of the firſt donatour is preferrit to all uther.

GIF ony man obtenis ane gift of non-entres, and be vertue thairof raiſis ſummoundis aganis the heritabill poſſeſſouris of the ſamin landis, and thairefter, *pendente lite*, deceiſſis, his air is preferrit to all uther perſounis obtenand ane uther gift of non entres of the ſamin landis, efter the dait of the gift foirſaid. 9 *Julij*, 1563, *The Maiſter of* Errol *contra N.* Keyth, 1 *t. c.* 1302.

ANE

C. X. Na gift of non-entres is ſufficient, bot of thay landis quhilkis at the day of the gift ar in non-entres.

ANE gift or diſpoſitioun of the non-entres or ward of ony landis, maid and gevin be the ſuperiour to ony man, as beand in his handis be reſſoun of non-entres or ward, the time of the making of the ſaid gift or diſpoſitioun, gif it be of veritie that the ſaidis landis were nather in non-entres nor ward the time foirſaid; the donatour hes na richt nor titill be reſſoun of the ſaid gift to the ſaidis landis, albeit the ſamin efterwart, at ony time followand the day and dait of the ſaid gift, happin to fall in non-entres or ward, *Ult. Julij*, 1543, *The Quene and* Edward Stewart *contra* George Colquhoun, 1 *t. c.* 592. For the gift of non-entres may not comprehend or be extendit to the non-entres ſupervenient efter the dait of the gift. 1543. — *Inter eaſdem partes.*

C. XI. Anent ane gift of non-entres gevin to the poſſeſſour of the landis.

THE heritabill poſſeſſour of landis being in poſſeſſioun thairof, and obtenand the gift of non-entres, aucht and ſould be preferrit to all uther perſounis obtenand ane uther gift of non-entres of the ſamin landis, ather efter his gift or befoir the ſamin, gif the time of the obtening of his gift he was *in bona fide*, and na intimatioun of ane priour gift maid to him, or ony ſummoundis raiſit aganis him conform thairto. 14 *Feb.* 1566, Robert Rollok *contra* Thomas Dingwall, 2 *t. c.* 323.

C. XII. The ſuperiour or his donatour, may remove the occupyaris of the landis.

LANDIS beand decernit be decrete of ane Judge to be in the ſuperiouris handis be reſſoun of non-entres, ſen the deceis of the laſt heritabill poſſeſſour and principal fré tenent to him thairof, the ſuperiour, or ony man cled with his richt, hes juſt richt and titill to warn the tenentis and occupyaris of the ſaidis landis to flit and remove thairfra. 15 *Feb.* 1506, Alexander *L.* Saltone *contra the Tenentis of* Ugſtoun. 22 *Mart.* 1560. 4 *Mart.* 1567, *Lord* Borthwik *contra* Williame Chalmer, 1 *t. c.* 780. *Item*, Gif the ſuperiour, alledgeand landis to pertene to him be reſſoun of non-entres, makis warning aganis his tenent occupyar thairof, to remove thairfra, and the tenent removis not, bot ſittis ſtill and occupyis the ſamin, the ſuperiour hes na richt nor titill to perſew the tenent for the violent profeitis of the landis, unto the time the ſaidis landis be firſt decernit to have bene and to be in non-entres; becauſe the declaratour of non-entres mon firſt precede and be gevin be ane Judge, befoir the intenting of the actioun of violent occupatioun of the landis, 11 *Julij*, 1545, Marion Ogilvie *contra Schiref of* Forfar *and Lord* Glamis, 1 *t. c.* 611. *Item*, Landis fallin in non-entres be reductioun of ane retour or utherwayis, the ſuperiour may not intromet with the landis at his awin hand, nather tak up nor intromet with the profeitis thairof, nor remove nor out-put the heritabill poſſeſſouris of the ſamin; becauſe the heritabill tenentis aucht and ſould remane in poſſeſſioun, and bruke and joiſe the landis and profeitis thairof, unto the time that the landis ar decernit be decrete of ane Judge ordinar, to be in non-entres, and the maillis and dewteis thairof decernit to pertene to the ſuperiour, 10 *Mart.* 1546, *The Laird of* Carmylie *contra Laird of* Panmure, 2 *t. c.* 180. *Item*, The ſuperiour, or his donatour, may perſew for the profeitis and dewteis of landis beand in his handis be non-entres, befoir ony decrete of the ſamin be obtenit; bot he may not ſeik landis to be compryſit for by-run mail-

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lis and dewteis, except juſt and trew declarator of non-entres be firſt gevin and pronuncit. 16 *Julij*, 1541, 2 *t. c.* 30.

C. XIII. The ſub-tenent may not be callit without the principal tenent.

IN the cauſe of non-entres the ſuperiour and his donatour aucht and ſould call his immediat tenent or vaſſal of the landis; and the ſub-tenant or ſub-vaſſal, poſſeſſour of the ſamin landis, may not be compellit to anſwer, except the ſaid vaſſal, his ſuperiour, be in like maner callit, 15 *Mart.* 1557, Alexander Murray *contra* James Scrimgeour, 2 *t. c.* 272. *Item*, The ſuperiour, or his donatour, in cauſis of non-entres, may firſt, and as he pleaſis, perſew the occupyaris of the landis during the time of the non-entres, for the maillis and dewteis of the ſaidis landis; and it is not neceſſare that the ſaidis landis be firſt poindit, diſtreinzeit or appryſit thairfoir. *Pen. Junij*, 1543. *N.* Meldrum *contra the L.* Pitſligo, 2 *t. c.* 147.

C. XIV. The laſt gift, with the firſt intimatioun, is preferrit to the firſt giſt, and laſt intimatioun.

GIF divers giftis of non-entres of the ſamin landis be diſponit to ſindrie perſounis, and the firſt donatour raiſis firſt ſummoundis aganis the tenentis be vertue of his gift, zit nevertheles the laſt donatour ſall be preferrit to him, gif he maid lauchful intimatioun to the tenentis of his gift, befoir the executioun of the ſummoundis raiſit at the inſtance of the firſt donatour. 2 *April.* 1568, Archibald Lokhart *contra* Ja. Lokhart, 1 *t. c.* 1303.

C. XV. All frehalderis ar Jugeis to thair tenentis in cauſis of non-entres.

ALL Baronis, and uther fréhalderis, havand powar to hald courtis, may call thair vaſſallis in thair awin courtis, befoir thair Baillies, to heir and fé landis haldin of thame be thair vaſſallis, decernit and declarit to be in non-entres. *Ult. Junij*, 1554, *Erle of* Angus *contra* Fernyhirſt, 2 *t. c.* 253.

C. XVI. Quhat landis fallis in non-entres.

LANDIS haldin in few-ferm, or blanché ferme, or be ſervice of ward and releif, may fall in the ſuperiouris handis be reſſoun of non-entres. 24 *Novemb.* 1570, *The Kingis Advocate contra* Robert Callendar, 1 *t. c.* 1363.

C. XVII. Burrow-feild land fallis not in non-entres.

AIKERIS, or ony uther burrow-field land, lyand within the fredom of ony burgh within this realme, as ane part thairof in commountie, on na wayis may fall or cum in non-entres: And gif the non-entres thairof be diſponit to ony uther burgh or perſoun, the ſamin is of nane avail, and may be reducit, 10 *Decemb.* 1527, *The burgh of* Hadingtoun *contra* Johne Carnbee, 1 *t. c.* 336. *Item*, Tenementis lyand within burgh, haldin of ony ſuperiour ſpiritual or temporal, ar in the ſuperiouris handis be reſſoun of non-entres, be deceis of the laſt lauchful poſſeſſour thairof, unto the entrie of the lauchful air thairto, 14 *Decemb.* 1515, *M.* Gavine Dumbar *contra Arch-deane of* Sanctandrois *and* Alexander Cuik, 1 *t. c.* 622. *Item*, All burrowis of royaltie haldin of the King in fré burgage, ar fré, and fallis not in non-entres, and ſwa ane air enterand to ony tenement within the ſamin, is haldin to pay na non-entres to the King, albeit he abyde furth never ſa lang, except the burrow-maillis uſit and wont allanerlie. 12 *Mart.* 1551, 1 *t. c.* 1136.

C. XVIII. Anent the profeitis of landis being in non-entres.

LANDIS beand in non-entres may not be compryſit, bot conform to the retour thairof allanerlie, be reſſoun that the retourit maill, and

and na farder, pertenis to the obtenar of the decrete, 14 *Mart.* 1566, Peter Oliphant *contra the Lord* Oliphant, 2 *t. c.* 325. *Item*, Gif ony landis fallis in non-entres, quhilk hes bene retourit to the chancellarie of befoir, gif the ſuperiour call and perſew for the profeitis thairof during the ſpace that thay have bene in non-entres, he aucht to have the retourit maill allanerlie, for all zeiris bygane, precedand the declarator of the ſaid non-entres, and fra thyne furth the haill zeirlie profeitis of the ſaidis landis, be reſſoun foirſaid: And gif the ſaidis landis hes never bene retourit, the ſaid over-lord may call and perſew for the zeirlie profeitis thairof, as thay commounlie gave in tak and aſſedatioun, *viz.* the maillis, fermis, kainis, cuſtumis, and all uther dewteis quhilk may be provin ſufficientlie be witneſſis. *Nota*, This foirſaid definitioun may be colectit out of divers decreittis contenit in the regiſter, *viz.* 4 *Mart.* 1509, *Tuiching the landis of* Rede *and* Langiſward. *Ult. April.* 1500, *The King* contra Robert Maitland, 1 *t. c.* 138. *Item*, Gif ony man be ſervit and retourit to ony landis, and thairfoir intromettis with the maillis, profeitis and dewteis of the ſamin, and it happinis thairefter his ſervice or retour to be reducit, he ſould not be decernit to content and pay to his ſuperiour for the profeitis quhilk he micht have had of the ſaidis landis, bot allanerlie the profeitis thairof intromettit be him, ſen the time of his ſaid ſervice; for albeit in uther caiſis of non-entres the tenentis payis allanerlie the bair maillis of the landis conform to the retour, zit in this cais it is not reaſonabill that he ſould have ony profeit of landis to the quhilk he hes na titill. 27 *Junij*, 1542, *The Laird of* Innes *contra* William Gadderer, 2 *t. c.* 114.

C. XIX. Non-entres for fiftie zeiris compryſis the propertie.

LANDIS beand fund be decrete of the ordinar Judge to have bene in the ſuperiouris or his predeceſſouris handis, be the ſpace of fyftie zeiris throw non-entres, the propertie thairof may be compryſit and decernit to pertene to the ſuperiour, his airis and ſucceſſouris, in all times cuming. 16 *Junij*, 1509, *The King* contra Andro Lundie *of* Balgony, 1 *t. c.* 154.

C. XX. Landis beand full, may not fall in non-entres.

LANDIS being full be ſaſine gevin to ony perſoun thairof, in fie, propertie, liferent or conjunct-fie, may not be decernit to be in non-entres induring the time of the ſaid ſaſine, 2 *April.* 1563, Robert Grant *contra Laird of* Drylaw. *Item*, Gif the ſuperiour callis and perſewis his tenent to heir and ſé his land decernit to have bene and to be in non-entres, be ane certane ſpace, the ſamin on na wayis pertenis to him be reſſoun of non-entres, gif his tenent be ſaiſit thairintill befoir the time be the quhilk thay ar alledgit to have bene in non-entres. 12 *Feb.* 1533, *Lord* Lindſay *contra Lady* Faſtcaſtell, 1 *t. c.* 447.

C. XXI. The principal landis being full, fillis all the pertinentis.

ITEM, Gif ony landis quhilk ar a part and pertinent of ony uther landis, be clamit be the ſuperiour to pertene to him be reſſoun of non-entres, and the ſaid principal landis be verifyit and provin to have bene full, the ſaidis landis, quhilk ar part and pertinent of the principal landis, on na wayis ſould be decernit in non-entres, bot rather to have bene full as the principal. 20 *Mart.*

1564, *The young Laird of* Lethingtoun *contra Lord* Zeſter *and the auld Laird*, 1 *t. c.* 832.

C. XXII. It is leaſum, efter the decrete of non-entres, to prove the landis to have bene full.

ITEM, Decrete of non-entres beand gevin aganis ony partie, for not ſchewing the landis to be full, gif it happinis him thairefter to recover the ſaſine of the ſaidis landis, and thairby verifie the ſamin to have bene full all the time that thay wer decernit to have bene in non-entres, the ſamin decrete is of nane avail, and aucht and ſould be reducit. 29 *Mart.* 1561, John Sympſone *contra* Robert Lyndſay, 1 *t. c.* 1252.

C. XXIII. Landis beand full be fiftie zeiris, may not be decernit to be in non-entres.

ITEM, Gif ony over-lord call and perſew his tenent to heir and ſé his landis pertening to him decernit to have bene in non-entres be the ſpace of divers and ſindrie zeiris, *viz.* be the ſpace of fiftie or ſixtie zeiris, or fra thyne furth, and the partie defendar produce ony ſaiſine or ſaiſines, beirand him and his predeceſſouris, or himſelf allanerlie, to have bene lauchfullie ſaiſit in the ſaidis landis be the ſpace of fiftie zeiris immediatlie preceding the day and dait of the ſummoundis intentit aganis him, he aucht and ſould be *ſimpliciter* aſſoilzeit fra the clame and petitioun proponit and perſewit aganis him tuiching the non-entres of the ſaidis landis, not onlie of the ſaid ſpace of fiftie zeiris, during the quhilk thay wer full, bot alſo of all uther zeiris and termis precedand the ſamin. 11 *Decemb.* 1511, *The King* contra *the Laird of* Grantullie. 14 *Mart.* 1550, *Quenis Advocate* contra William Cairnis, 1 *t. c.* 129.

C. XXIV. Thré ſaſines fillis the landis.

ITEM, Gif the ſuperiour callis and perſewis his immediat tenent to heir and ſé the landis haldin be him decernit to pertene to him as ſuperiour be reſſoun of non-entres, the ſaid tenent ſall be aſſoilzeit thairfra, and the landis, with thair pertinentis, on na wayis decernit in non-entres, gif he himſelf, and twa of his forbearis immediatlie preceidand him, wer retourit, ſervit and ſaiſit, ilk ane efter utheris, as immediat tenentis of the ſaidis landis, with the pertinentis to the ſaid ſuperiour; becauſe thré retouris, with ſaiſines followand thairupon in maner foirſaid, ſtandand unreducit, ar ſentences in thameſelfis, and fries the landis contenit thairin, with thair partis, pendicles and pertinentis, fra all foirfaltour of non-enttes, for all dayis, zeiris and termis precedand the intenting of the ſaidis ſummoundis of non-entres. 21 *Mart.* 1564, *Young* Lethingtoun *contra his father and Lord* Zeſter, 1 *t. c.* 831.

C. XXV. He may clame na profeitis be reſſoun of non-entres, quha be ony uther titill intromettis with the ſamin.

ITEM, Gif landis, haldin of the King be ony of his liegis, becum in his Hienes handis with tenentis and tenandries thairof, and the gift of the non-entres be diſponit to his immediat tenent, and he obtene decrete, decernand the ſaidis utheris landis, with thair tenentis and tenandries to pertene to him be reſſoun of non-entres, the profeitis and dewteis of nather of the ſaidis tenandries pertenis to him be reſſoun of the ſaid gift or decrete, gif that he, induring all the zeiris and termis of the ſaid non-entres, intromettis with, and takis up the ſamin for ony uther cauſe to his utilitie and profeit, be himſelf, or utheris in his name. 11 *Mart.* 1548, William *Lord* Sinclare *contra the tenentis of the fiſhing of* Ithan, 1 *t. c.* 981.

ITEM,

C. XXVI. Poſſeſſioun conform to a titill fillis the landis.

ITEM, Gif ony man clame landis be reſſoun of non-entres, the ſamin ſould not be decernit to pertene to him, gif thay, induring the ſpace alledgit of non-entres, wer bruikit and joiſit be ony perſoun, be the privilege of ony general act maid in favouris of thame that happinis to be ſlane, or deceiſſis in our ſoverane Lordis armie; becauſe the landis ar full, be ane titill quhilk ſtoppis thame to fall or cum in non-entres during the zeiris contenit in the act. 21 *Mart.* 1551, 1 *t. c.* 1195.

C. XXVII. Conjunct-fie fillis the landis, and ſtoppis thame to fall in non-entres.

GIF the ſuperiour clamis ony landis as pertening to him be reſſoun of non-entres, be the ſpace of certane zeiris, and the ſaidis landis be full, be reſſoun of conjunct-fie pertening to ony Lady, or in reſpect of ony uther ſaſine, and that during ane certane ſpace of the ſaidis zeiris acclamit; the defendar ſould be aſſoilzeit fra the non-entres induring the ſpace that the landis were full in maner foirſaid, albeit the landis may be decernit to have bene and to be in non-entres induring the remanent zeiris acclamit. 14 *Feb.* 1554, *Quenis Advocate* contra Uthride Macdougall, 1 *t. c.* 742. *Item*, Landis gevin in conjunct-fie to ony Lady, to be haldin of the ſuperiour, may not fall in non-entres induring the time of the ſaid conjunct-fie, gif the ſuperiour hes ratifyit and apprevit the ſamin, or gevin his confirmatioun thairupon; utherwayis the ſamin landis may fall in non-entres, gif thay be not confirmit be him, 6 *Mart.* 1566, *The Quene and* Alexander Home *contra* George Cranſtoun *of* Corſbie, 1 *t. c.* 778. *Item*, Gif the ſuperiour of ony landis callis and perſewis his tenent, poſſeſſour of the ſamin, to heir and ſé the ſamin decernit to be in his handis be reſſoun of non-entres of the richteous air thairto, the ſamin landis, or ony part thairof, pertening to ony Lady or woman in conjunct-fie, on na wayis ſould be decernit to be in non-entres during the time and ſpace of the ſaid conjunct-fie, 27 *Jan.* 1530, *The King* contra *Erle* Craufurd, 1 *t. c.* 329. *Item*, Conjunct infeftment of landis maid and gevin to ony woman be hir husband, and confirmit be the ſuperiour, makis landis to be full; and albeit the conjunct-fear, efter hir huſbandis deceis, renunce hir conjunct-fie, and take hir to ane liferent, zit hir infeftment or conjunct-fie ſtoppis the landis to fall in non-entres during hir lifetime. 10 *Jan.* 1566, Bryce *contra* Fleſhour. 10 *Julij*, 1568, *Lord* Fleming *contra Lord* Roſſe, 1 *t. c.* 1346.

C. XXVIII. At quhat time non-entres expyris.

NON-ENTRES, and all giftis thairof, ceiſſis and expyris, ſa ſoon as the landis ar full be the lauchful entrie of the richteous air thairto: Bot gif it happin the ſaid air's retour and ſervice to be reducit, with all that followit thairupon, and thairefter ane uther gift of non-entres of the ſamin landis to be gevin to ane uther perſoun, the ſamin gift is of nane avail, ſtrenth nor effect; becauſe the firſt gift ſould be preferrit thairto, in reſpect thair was na lauchful entrie of the richteous air to the ſaid landis ſen the deceis of the perſoun be quhais deceis the firſt gift of non-entres was gevin. 17 *Julij*, 1494, *The Lord* Fleming's *ſone* contra *N.* Dikſon *of* Ormeſtoun, 2 *t. c.* 199.

C. XXIX. Of landis unitit in baronie, fallin in non-entres.

GIF ony landis be unitit and annext as ane part and pertinentis, annexis and connexis to ane baronie, and thairefter be decernit to be

be in the ſuperiouris handis be reſſoun of non-entres, the ſamin unioun and annexatioun is underſtuid to be brokin and diſſolvit concerning the ſaidis landis quhilkis ar decernit in non-entres: And gif the over-lord and proprietar of the ſaid baronie, efter the geving of the ſaid decrete of non-entres, obtenis ane new infeftment, with confirmatioun and ſaſine thairupon, of the ſaid baronie, and als *per expreſſum* of the ſamin landis, quhilk wer diſſolvit thairfra be the ſaid decrete of non-entres; zit nevertheles the ſaid unioun is not validate, nather convaleſcis thairby, and the ſaſine tane conform to the infeftment foirſaid fillis not the ſaidis landis, nor may not ſtop thame to fall in non-entres. 18 *Julij*, 1541, *In the actioun of* Redie, 2 *t. c.* 40.

Anent the parliament.

C. I. Of cuming to parliament.

GIF ony Prelat, Baron or burges, quha ſould give perſonal preſence in all general counſallis, and courtis of parliament, for thair aviſe and counſall to be had in all materis concerning the commoun weill, being requirit and chargit, in our ſoverane Lordis name, to compeir thairintill, and nevertheles refuſis and poſtponis to do the ſamin, thay may be chargit of new agane, in his Hienes name, to cum and concur with the remanent of our ſoverane Lordis liegis, in geving of thair counſall concerning the effairis of the realme; with certificatioun to thame and thay failzie, it ſall be leafum to his Hienes to intromet with thair landis and beneficeſ, and with the maillis and dewteis of the ſamin, to be diſponit at his pleaſour for thair contemptioun. 23 *Auguſt.* 1546, 1 *t. c.* 651.

C. II. Of troubill or invaſioun maid the time of the parliament.

GIF ony perſounis, of quhatſumever eſtait, degreis or conditiouneis thay be, makis ony diſcord, ſtrife or debait, or invadis one another in the time, place, town or boundis quhair the parliament is haldin for the time, albeit the ſamin procede upon auld feid or foirthocht felonie, baith the ſaidis parties, with thair ſervitouris that wer with thame in company for the time, aucht to be brocht and accuſit but delay, and put to the knawledge of ane aſſiſe, befoir the iſche of the ſaid parliament; and quhilk of thame beis convict of the ſaid crime and treſpas, the King, with aviſe of the parliament, may puniſh thame in ſic wayis as his Majeſtie may be untrublit in time to cum, and that his liegis may cum and ſurelie remane, but ony hurt or cruel violence, to do his Majeſtie ſervice in time of parliament, and all uther times quhen thay ar commandit and chargit to convene, like as his Majeſtie and his maiſt nobill progenitouris hes bene governit and reulit of befoir. 10 *Octob.* 1487, *The King in parliament* contra *the Lord* Lyle *and the Erle of* Buchan, 1 *t. c.* 36.

C. III. THAT all Prelatis, Baronis and frehalderis ſall compeir perſonallie in the parliament. *Ja.* I. *fol.* 9. *act.* 58. 11 *Mart.* 1425.

C. IV. SMALL Baronis and frehalderis neidis not cum to parliament. *Ja.* I. *fol.* 17. *c.* 112. 1 *Mart.* 1427.

THAT

THAT all frehalderis within ane hundreth merkis of extent ſend thair procuratouris to the parliament. *Ja.* IV. *fol.* 106. *c.* 113, 11 *Mart.* 1503. C. V.

THE maner of arraymentis for the parliament. *Ja.* II. *fol.* 35. *act.* 52. 4 *Aug.* 1455. C. VI.

HABITIS for the Lordis of ſeſſioun, and men of law. *Ja.* II. *fol.* 41. *c.* 76. 6 *Mart.* 1457. C. VII.

ITEM, In time of parliament the Kingis tutour, governour or regent, ſall wear ane mantle of ane Duke; ane crowne of ane Duke; the ſceptour, in ſigne of regiment and governament of the realme; and the ſword of honour, in ſigne of juſtice. 11 *Julij*, 1515, 1 *t.* *c.* 366. C. VIII. The habit of the Kingis tutor or regent.

Anent the college of juſtice, inſtitutioun and judicatorie thairof.

1. THE inſtitutioun of the college of juſtice. *Ja.* V. *fol.* 113. *c.* 6. 17 *Maij*, 1532. C. I. *Vide hac omnia in libro impreſſo.*
2. The place quhair to ſit in, and the feriat times.
3. The Lordis to be ſworn.
4. The authorizing in parliament.
5. The authoritie of the Chancellar and Lordis.
6. The namis of the Lordis.
7. The Chancellar and Preſident to reſſave the aithis of the Lordis abſent.
8. The Chancellar, Preſident and Lordis of ſeſſioun to mak the ordour how it ſall be procedit in thair ſeſſioun.
9. The diviſioun of the realme quarterlie.
10. That all ſummoundis privilegit be callit on *Monounday* ouklie, quhilk followis, and horning all tymes.
11. That all the commoun materis be callit on all the dayis of the oulk, except *Friday*, for the King, Quene, and ſtrangeris materis.
12. That all continuatiounis be callit at the dayis aſſignit thairto.
13. Anentis deliverance of cognitioun to Schireffis.
14. The counſal-hous to be reparrellit.
15. That all Lordis enter the tolbuith at aucht houris.
16. That the counſal-hous be iſheit efter the entrie of the Lordis.
17. That na man pley bot parteis and thair procuratouris.
18. That billis and continuatioun be firſt red, and ſyne the tabill.
19. For examinatioun of witneſſis.
20. That all materis be callit be the ordour of the tabill.
21. That ſilence be had in the counſal-hous.
22. Of the geving of voitis, and ordour thairof.
23. That ten Lordis ſall remane with the Preſident.
24. Executioun of ſentence to be maid be Heraldis, Purſevantis, and Maſſaris.
25. Of the Clerkis of the ſignet.

26. Anent payment for billis of complaint, and the Kingis letteris.

27. Anent the delivering of Billis.

28. That Maſſaris keip counſall.

29. Quhat Maſſaris ſall tak for thair labouris.

30. The number of Advocatis, and thair names.

31. Advocatis to be ſworn.

32. That all Advocatis pas furth of the counſal-hous quhen the Lordis paſſis to diſputatioun.

33. Anent exceptiounis, dilatouris.

34. The Kingis gude mynd anent the Lordis of the ſeſſioun, to wit, protectioun for thame; na ſiniſter informatioun to be heard aganis thame uncallit; fré of all taxis, and beiring of offices; the punitioun of the perſounis that faultis to thame. *Hæc rex ſubſcripſit apud Striveling, decimo Junij, anno prædicto.*

C. II. The Lordis of ſeſſioun ar not Jugeis competent in criminal cauſis.

THE Lordis of ſeſſioun ar on na wayis Jugeis competent to cognoſce in ony actioun or caus concerning crimes, ſic as hurting, mutilatioun, or ſlauchter of men: And farder, gif ony perſoun be accuſit criminallie befoir the Juſtice, or his deputis, or ony ather Judge within this realme havand criminal juriſdictioun, and be put to the knawledge of ane aſſiſe thairanent, gif he be ather fylit or quytit, quhidder the ſamin deliverance of the aſſiſe be wrangouſlie or richteouſlie done, the ſaidis Lordis hes na powar to cognoſce thairupon, bot aucht and ſould remit the ſamin to the Juſtice, and his deputis, to be decidit befoir thame be ane greit aſſiſe, conform to the lawis of this realme, 7 *Decemb.* 1500, *The King* contra *the Schiref of* Fife. Bot ony perſoun beand accuſit criminallie befoir the Judge criminal, as ſaid is, the ſaidis Lordis ar Jugeis competent to cognoſce and tak inquiſitioun, quhidder the ſamin Judge hes procedit ordourlie, or not, in ſic thingis as concernis thair office in leiding and deducing of the proces: And gif he be fund culpabill, or convict to have unordourlie or unjuſtlie procedit, thay may decern him to be puniſt thairfoir, and als reduce the proces led, done and pronuncit be him. And gif the Judge in ony actioun of blude, as is perſewit of foirthocht felone committit, takis inquiſitioun, or makis accuſatioun, of troublance, and makis the perſounis committaris of the ſaid blude quyte of the troublance, intending thairby, in defraud of juſtice, to mak thame quyte of the blude, and foirthocht felonie, in ſa far as he may, the ſaidis Lordis may likewayis cognoſce thairupon. 5 *Dec.* 1500, *The King* contra *Baillies of* Hadingtoun. 15 *Dec.* 1526, *The Erle of* Caſſillis *contra the Juſtice-general and his deputis.* 2 *April.* 1517, John *Erle of* Lennox *contra the King*, 1 *t. c.* 201.

C. III. Lordis of ſeſſioun Jugeis competent alanerlie anent the breking of the actis of parliament.

GIF ony perſoun, ſpiritual or temporal, within this realme, accuſis ony for breking of the actis of parliament, the King, and the Lordis of counſall, and nane utheris, ar Jugeis competent thairintill. 9 *Julij*, 1515, *The King* contra Gavin Poſtulat *of* Aberbrothok, 1 *t. c.* 355.

C. IV. Anent puniſhment of Officiaris of armis.

THE Lordis of counſall hes powar to accuſe and convict ane Meſſenger or Officiar of armis, anent the wrangous executioun of his office, and tak his armis and office fra him, and mak publicatioun

tioun thairof, be thair letteris direct furth throw the realme thairupon. 15 *Julij, &* 10 *Aug.* 1532. 14 *Julij,* 1535, *The Lordis* contra Andro Murray *Meſſinger,* 1 *t. c.* 975.

C. V. Anent the diſcharging of the Kingis privie writingis.

GIF the King give ony privie writing, quhilk is direct contrare the adminiſtratioun of juſtice, or hinderis and poſtponis the ſamin, the Lordis of counſall may diſcharge or ſuſpend the ſamin, 13 *Junij,* 1533, William Baron *contra the Erle of* Mortoun. 12 *Jan.* 1533, David Somervile *contra* David Schaw, 1 *t. c.* 444. *Item,* Gif the King directis his privat writingis ſubſcrivit with his hand, in favouris of ony perſoun, to the Lordis of counſall, commanding and charging thame to deſiſt and ceis fra all farder proceding in ony actioun or cauſe dependand befoir thame, the Lordis, notwithſtanding the ſamin, may procede in the cauſe, and do juſtice thairintill, as thay will anſwer to God and the King; becauſe the adminiſtratioun of juſtice ſould not be ſtoppit be the Kingis privie writingis; and all his writingis ar underſtuid to be privie that ar under his Grace's hand-writ * allanerlie, 15 *Decemb.* 1569, *Erle of* Mortoun *contra Lord* Fleming. 2 *April.* 1541, *Lord* Ogilvie *contra* Gray, 1 *t. c.* 885. *Item,* Gif the King grantis or directis ony letteris under his ſignet and ſubſcriptioun, charging ony of his liegis to do ony deid, under the pane of rebellioun, and putting of him to the horne, and he aganis quhom thay ar direct not beand callit to heir the ſamin gevin, the Lordis, at the inſtance of the ſaid partie meanand him to thame thairanent, may ſuſpend *ſimpliciter* the ſaidis letteris, as evil gevin, without ony cognitioun tane in the cauſe, and decern thame to deſiſt in time cuming. 18 *Julij,* 1532, *The Laird of* Wauchtoun *contra Frier* James Paterſoun. *Ult. Aug.* 25 *Sept.* 1532, *N.* contra *the Preceptor of* Torphechin, 1 *t. c.* 1000.

* Several copies have it, *Hand-writ or ſignet alanerlie.*

C. VI. Anent the execution of the Lordis of ſecreit counſal's decreit.

THE Lordis of ſeſſioun ar not Jugeis competent in the cauſe of ſuſpenſioun of ony letteris of horning direct and gevin be the Lordis of ſecreit counſal, conform to ane decreit gevin be thame, the quhilk the ane partie refuſis to obey, and thairfoir deſyris the letteris and executioun thairof to be ſuſpendit aganis the uther partie; becauſe the Lordis of ſecreit counſall, quha wer the gevaris of the decreit, ar Jugeis to all letteris, and uther contraverſies or debaitis quhilk fllowis and ariſis upon the ſaid decreit, 13 *Junij,* 1545, Marion Touris *contra the Laird of* Weymis. Bot gif the partie fulfillis and obeyis the ſaid decreit, the Lordis of counſall may ſuſpend the letteris and proces of horning gevin be the Lordis of ſecreit counſall. 1 *April.* 1546, Marion Touris *contra Laird of* Weymis, 1 *t. c.* 605.

C. VII. Anent the Kingis actiounis.

THE Lordis of ſeſſioun alanerlie, and na uther inferiour Judge within this realme, ar Jugeis to the Kingis actiounis; for his Hienes, nor his Advocat, may not be callit befoir ony inferiour Judge, bot befoir thame alanerlie. The quhilk privilege is likewayis grantit and extendit to the Quenis dowariar, 16 *Julij,* 1534, 1 *t. c.* 989. *Item,* The Lordis of ſeſſioun alanerlie ar Jugeis competent to all actiounis and pleyis betwix ony privie perſounis concerning the Kingis privileges, richt, or giftis. 1 *Feb.* 1549, 2 *t. c.* 193.

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C. VIII. The Lordis of ſeſſioun may refer difficile cauſis to the parliament.

GIF ony actioun or cauſe intentit or perſewit befoir the Lordis of ſeſſioun, be of ſwa greit difficultie that thay may not decide nor declare the ſamin, thay ſould refer it to be decidit be the eſtatis in parliament. 4 *Mart.* 1534. James Kenedie *of* Blairquhan *contra* Thomas Maclellane *of* Gilſtoun, 1 *t. c.* 468.

C. IX. It is leaſum to appeal fra the Lordis of ſeſſioun to the parliament.

GIF ony man thinkis him heavilie hurt be the Lordis of ſeſſioun, in pronuncing of ane decreit aganis him, he may proteſt for remeid of law, and appeal to the parliament, 18 *Jan.* 1532, *M.* Edward Cunynghame *contra the Vicar of N.* 1 *t. c.* 502.

THE Lordis of ſeſſioun ar Jugeis competent to ken and cognoſce *ex eiſdem deductis*, or utherwayis, upon the retractatioun and validitie of ony decreit gevin be thame at the inſtance of ony perſoun of befoir, quhair ony uther perſoun alledgis him to be hurt be ane wrangous and unjuſt decreit, and libellis ſummoundis in dew form for reductioun thairof; quhatever happin to follow upon ſic ane decreit; notwithſtanding that efter the geving of the ſamin thair happin twentie, threttie or ma zeiris to rin, befoir the partie aganis quhom it is gevin raiſis ſummoundis for reductioun thairof; becauſe preſcriptioun within fourtie zeiris at the leiſt hes na place in this cais.

Item, The Lordis of counſal, anent the reductioun and retreiting of decreitis gevin be thame at the inſtance of ony partie, ar equivalent, and repreſentis the place of a competent Judge of appellatioun in the ſecund inſtance; the quhilk Judge of appellatioun is aſtrictit to procede in ony cauſe of appellatioun dewlie interponit to him, and to confirm or infirm the ſentence that is appeallit fra, efter the meritis of the cauſe deducit befoir him, albeit the landis of the appealler wer compryſit for the ſowmis contenit in the firſt ſentence, with infeftment, ather to ſpiritual or temporal perſoun, following thairupon.

Item, Gif the Lordis of counſall wer not Jugeis competent to the reductioun of all decreitis gevin befoir thame, thair ſould follow ane greit inconvenient and abſurditie, *viz.* That albeit that ony perſoun wer enormlie hurt be decreit of the ſaidis Lordis, thair wer na remeid nor reformatioun to be had thairof; becauſe thair is na competent Judge within this realme, havand ſufficient facultie of our ſoverane Lord, be quhais powar and juriſdictioun the ſaid pretended decreit may be reducit, bot the ſaidis Lordis alanerlie; and ſwa ane wrangous decreit and ſentence ſould remane unretreitit, in greit prejudice and enorme hurt of the partie aganis quhom it was gevin, cauſand the perſounis obtenaris thairof to with-hald wrangous gudis and geir, quhilk thay micht not have of gude zeal and conſcience, nor without greit danger of ſum of the Jugeis that gave the ſamin; becauſe be the law thay ar obliſt to refound to the parties, quhom thay hurt be thair ſentence, all damnage and ſkaith quhilk thay happin to ſuſtene thairthrow; for in this cais *litem faciunt ſuam.*

Item, The ſaidis Lordis of counſall ar Jugeis competent to the reductioun of all decreitis gevin be thame, notwithſtanding, be vertue thairof, his landis, aganis quhom the ſamin was gevin, ar compryſit, and infeftment or mortificatioun thairof to the kirk followit thairupon; utherwayis it micht follow that the kirk ſould bruik and joiſe ane wrangous poſſeſſioun, the quhilk in that cais hes na mair pri-

vilege, bot rather les than has the temporal eſtait, 6 *Mart.* 1534, Alexander Innes *of that ilk* contra *M.* Alexander Dumbar *Deane of* Murray, 1 *t. c.* 486.

Item, The Lordis of ſeſſioun alanerlie, and na uther Judge, ar Jugeis competent to actiounis of reductioun of infeftmentis, evidentis, or ſaſines, and of all actiounis of heritage betwix all the liegis of this realme, ſpiritual or temporal, and to all obligatiounis and contractis followand as acceſſory thairupon, 20 *Mart.* 1545, *Sir* James Caldwell *contra Sir* James Maiſon; except ſpecial proviſioun be maid in the infeftment, that in cais of contravention of ony heid or clauſe contenit thairintill, the maker thairof, and his ſucceſſouris, ſall be Jugeis competent, and tak cognitioun thairanent, 3 *Julij*, 1563, *The Biſchop of* Aberdene *contra* Johne Ogilvie, 1 *t. c.* 615.

Item, The Lordis of counſall alanerlie ar Jugeis competent to the executioun of thair awin decreitis, and to the deciſioun of all debaitis and contraverſies reſultand or aryſand upon the ſamin. 15 *April.* 1559, Elizabeth Hamiltoun *contra* Marion Hamiltoun, 1 *t. c.* 1228.

Item, The Lordis of ſeſſioun alanerlie, and na utheris, ar Jugeis competent to the reductioun of ninetene zeir takkis, 16 *Novemb.* 1532. And ſiclike upon all contraverſies, debaitis or reclamatiounis interponit fra ony decreit arbitral, regiſtrat in the buikis of counſall, 18 *Junij*, 1532; like as thay, and nane utheris, gevis and grantis letteris to compell parties to fulfill decreitis arbitral, everie ane according to thair awin partis, 9 *Julij*, 1532, 1 *t. c.* 726.

Item, The ſaidis Lordis of counſall ar onlie Jugeis competent to the reductioun of all actiounis of takkis and aſſedatiounis ſet for liferent, and ſufferis na uther Jugeis within this realme to procede thairupon, albeit the ſamin be of teindis or uther dewtie pertening to the kirk. *Ult. Julij*, 1550, 1 *t. c.* 1124.

C. X. The Lordis of ſeſſioun ar ſumtimes Jugeis to ſpiritual cauſis.

THE Lordis of counſall hes powar to cognoſce and decide upon ſpiritual cauſis, gif the conſiſtorie, or eccleſiaſtical juriſdictioun ceiſſis, or be ſtopt be civil wars or utherwayis, 19 *Decemb.* 1560, Johne Chalmer *contra* Agnes Lumiſdene, 1 *t. c.* 1338.

Item, The Lordis of counſall ar Jugeis competent in cauſis of transferring of all decreitis, contractis or obligatiounis gevin be quhatſumever Judge, ſpiritual or temporal, actit and regiſtrat in thair buikis. 10 *Julij*, 1566, Johne Balfour *contra M.* Alexander Balfour, 2 *t. c.* 316.

The Lordis of counſall, of thair office, may help and ſupplie the irrelevancie of ony exceptioun or alledgeance proponit be the partie, throw the negligence and ignorance of him that is procuratour, gif the ſamin conſiſtis *in facto*. 25. *Jun.* 1541, Johne Finlaſon *contra* Ker, 2 *t. c.* 47.

The Lordis of counſall ar Jugeis competent betwix ſtranger and ſtranger, in all civil actiounis, *etiamſi agatur de rebus extra regnum per eos emptis vel conductis*, and ſould decern and judge thairanent conform to the commoun law, and not efter the municipal law of this realme. 17 *Decemb.* 1550, *Ane* Frenchman *contra ane* Engliſhman, 2 *t. c.* 228.

All ſummoundis quhilkis cumis in be tabill befoir the Lordis of

counſall, and ſould be tabulat and affixt abone the tolbuith dur, thré dayis *excluſivé* afoir the day of calling thairof, ſwa that the ſamin may cum to the knawlege of the partie defendar. 13 *Jun.* 1532, 1 *t. c.* 609.

Gif ony perſoun havand ony actioun dependand befoir the Lordis, quhilk aucht and ſould be callit be ordour of the tabill, is alreadie imployit in the commoun effairis of this realme, or ſchortlie to be imployit, the Lordis may diſpenſe with the ordour of the tabill, and call his actioun. 13 *Feb.* 1532, *Abbot of* Aberbrothok *contra Biſchop of* Sanctandrois, 1 *t. c.* 997.

All actiounis and cauſis concerning the commoun weill ſould be ſummarlie decidit be way of ſupplicatioun, and not be lang proces. 13 *Maij*, 1549, 1 *t. c.* 1104.

Gif ony man as member of the ſeſſioun, kirkman, or uther, hes privilege of the tabill in calling of actiounis, the ſamin privilege ſould be underſtuid alanerlie of ſic actiounis as pertenis to him originallie; and thairfoir gif he be ceſſioner or aſſignay to ony actioun maid be ane uther man, he ſould on na wayis bruik or joiſe the ſaid privilege. 10 *Decemb.* 1541, David Deniſtoun *contra Laird of* Buchanan, 2 *t. c.* 226.

Item, It is ſtatute and ordanit, that na deliverance of billis pas in ony civil actioun, notwithſtanding thay be ſubſcryvit be the Lordis, without the Chancellaris hand be thairat, gif he be preſent for the time; and in his abſence, be the Preſident; and in his abſence, be ane ordinar Lord, ſpeciallie depute be ather of thame to that effect, for quhom thay will anſwer. *Item*, That na deliverance of billis be in ony criminal actioun, quhat maner of ſubſcriptioun ſa-ever be thairat; except the Juſtice-general, gif he beis preſent, or in his abſence, the Juſtice-clerk, ſubſcrive the ſamin; or in baith thair abſence, thair under-clerk ſpeciallie depute to that effect ſubſcrive the ſamin,: And gif ony deliverance, civil or criminal, be utherwayis paſt, that na ſignet nor ſeill anſwer thairto in time cuming. 8 *Feb.* 1518, 1 *t. c.* 624.

C. XI. Privilege of the memberis of ſeſſioun anent taxatiounis.

THE Advocatis, Scribis, Writeris to the ſignet, and all uther memberis dependand upon the ſeſſioun, ar fré fra all taxatiounis, ſtentis, or impoſitiounis, raiſit for ony commoun cauſe concerning the weill of the realme, or ony uther privie cauſe concerning the Prince alanerlie, or quhatſumever uther cauſe or cauſis: And gif thay, or ony of thame, happinis to be ſtentit or poindit thairfoir, or ſowmis of money, or uther gudis tane fra thame, the ſamin aucht and ſould be reſtorit agane to everie ane his awin part. 15 *Decemb.* 1565, *The Advocatis* contra Edinburgh. Bot gif ony of thame happinis to uſe and exerce merchandice, he ſould not bruik and joiſe the privilege and immunitie foirſaid. 20 *Novemb.* 1565, *The burgh of* Edinburgh *contra M.* Johne Moſcrop, 1 *t. c.* 886.

Item, All ordinar Lordis of the ſeſſioun ſould be fré in all time cuming fra all taxatiounis, impoſitiounis, exactiounis, or payment of ony thriddis of thair beneſices, except Prelatis. 15 *Decemb.* 1564, *The Lord* Provand *contra the Comptroller.* 24 *Jan.* 1566, *Perſoun of* Egilſham *contra the Comptroller.* 27 *Julij*, 1566, *The Dean of* Murray *contra the Theſaurar*, 1 *t. c.* 829.

Item, Na ordinar Lord of ſeſſioun, Advocat, Scribe, Writer to the

the ſignet, nor member thairof, may be callit in ony actioun or cauſe befoir ony inferiour Judge within this realme, bot befoir the Lordis of ſeſſioun alanerlie. 10 *Decemb.* 1561, *The Laird of* Lethingtoun *contra the Schiref of* Louthian. 20 *Novemb.* 1567, *M.* Johne Abircrombie *contra N. 1 t. c.* 1269.

C. XII. The ordouring of the counſal-hous.

WE do zou to wit, that the Kingis Grace, with aviſe of his counſall, for reule to be keipit in the counſal-hous, and expeditioun of cauſis that cumis befoir thame to be diſcuſſit, quhilk ar greitlie ſtopt and hinderit throw multitude of people that cumis in to the counſal-hous, makand greit noyſe and miſreule, hes devyſit and ordanit, for all times to cum, that this reule be keipt; that is to ſay, at the entrie of my Lord Chancellar, or Preſident for the time, that nane enter in the counſal-hous bot thay that ar upon the counſal, or that beis commandit be my Lord Chancellar or Preſident; and efter thair entries, the Maiſſar to ſtand in the counſal-hous dur, haldand it opin, and that na man enter thair quhill that the Maiſſer ſchaw that ſic ane man is thair, and bring him anſwer thairupon; and gif ony man cumis in without licence, or aganis the Maiſſeris will, that he that dois the ſamin enter his perſoun incontinent in ward in the caſtell, thair to remane for his contemptioun, quhill he be louſit be the Kingis Grace: And gif the ſaid Maiſſer lattis ony in, but command of the ſaidis Lordis, that he incur the ſaid pane. And quhen ony partie enteris to pley, that the principal parties, and thair Advocatis enter with thame, without ony mair perſounis, except thay obtene licence to ane freind or twa, to enter to give thame counſall, and that efter thair entries befoir the Lordis: Quhairfoir the Kingis Grace and his counſallaris chargeis all and ſindrie the liegis and ſubdittis, quhom it effeiris, that nane of thame cum in the contrare of this ordinance, under the pane of wairding foirſaid. 23 *Julij*, 1511, 1 *t. c.* 188.

C. XIII. Of Maiſſeris wantand thair Maiſſer-wandis.

GIF ony Maiſſer that daylie ſervis in the tolbuith, wantis his Maiſſer wand in the ſaid tolbuith, or in the executioun of his office, he ſall not be participant of ony caſualties or accidentis that ſall happin to be gottin for that day for thair ſervice. 23 *Junij*, 1559. *Vid. the act of admiſſioun of* William Bryſon *and* Magnus Touris *to be Maiſſeris*, 1 *t. c.* 1232.

C. XIV.

THE changing of the greit vacance of the ſeſſioun. *Ja.* VI. *fol.* 2. *act.* 8. 25 *Julij*, 1578.

C. XV.

ANENT the admiſſioun of privie writingis, chargeis and commandis be the Lordis of ſeſſioun. *Ja.* VI. *fol.* 17. *act.* 29. 20 *Octob.* 1579.

C. XVI.

ANENT the admiſſioun of the ordinar Lordis of the ſeſſioun, and reformatioun of certane abuſis thairin. *Ja.* VI. *fol.* 18. *act.* 30. 20 *Octob.* 1579.

C. XVII. The ordour of the tabill of the ſeſſioun.

MONOUNDAY, Redemptioun of landis; reductioun of all kind of transferringis; tinſal of ſuperiorities; for making, ſeilling and ſubſcryving of reverſiounis.

TUES-

TUESDAY, Recent ſpuilzies outwith the time of vacance. Actis of adjournal.

WEDNISDAY, The commoun tabill of the four quarteris of the realme, be ordour ilk ane efter utheris, as is dividit in the actis of inſtitutioun in the prent buiks of parliament. *Ja.* V. *fol.* 114. 17 *Maij*, 1532.

THURISDAY, The ſamin tabill.

FRIDAY, The Kingis actiounis, ſtrangeris, and the puir.

SATURDAY, The Lordis of ſeſſioun, and memberis thairof; the Prelattis, payaris of contributioun, and the commoun tabill foirſaid.

And upon the *Wedniſday* and *Thuriſday* to call all commoun privilegit actiounis, ſic as horningis, fré perſounis, evidentis, fortalices, warningis, letteris conform to rolmentis, decreittis arbitral, takkis, penſiounis, ordinar letteris, giftis, regiſtrating of contractis, advocatiounis, actiounis civil or prophane, doubill poindingis, billis, ſupplicatiounis.

And thir laſt actiounis to be callit of new be ordinance of the Lordis of ſeſſioun for expeditioun of cauſis.

Of courtis.

C. I. Of divers courtis and amerciamentis thairof.

IT is ſtatute and ordanit, that the Schiref ſall have for his fie ten pundis of the eſcheittis, and the Schiref-clerk twa ſchillingis for ilk amerciament: And the Schiref-officiar or Serjand ſall have for his fie ane colpindach, or threttie penies, for ilk ane condampnit in ane unlaw. *Item*, The amerciament of the ſchiref-court ſould not excede ſaxtene ſchillingis, and for the Clerkis fie twa ſchillingis, and ane colpindach or threttie penies for the Schireffis Serjand. *Item*, The amerciament befoir the Juſtice on the north ſyde of *Forth* is aucht kye, and ane colpindach to the Coroner, with twa ſchillingis to the Juſtice-clerk: And on the ſouth ſyde of *Forth*, *viz.* in *Louthian* and within the partis of *Forth* and *Tyne*, the amerciament befoir the Schiref is ten pundis, and to the Coroner ane colpindach, or threttie penies. *Item*, The amerciament within burgh, befoir the Proveiſt and Baillies in the burrow courtis, is aucht ſchillingis. *Item*, Amerciament within burgh befoir the Chalmerlane, haldand the Chalmerlane air, is fiftie ſchillingis, and to his Clerk twa ſchillingis, and to the Serjand of the burgh four penies for ilk amerciament, *Mal. Mak. c.* 4. *Item*, All Baronis ſall in thair courtis uſe and keip the lawis, as the ſamin is uſit befoir the Kingis Juſtice and Schirefis in all thingis, als weill in unlawis as in Serjandis fies, as the ſamin is uſit befoir the Schiref. *Item*, Knychtis that haldis of Baronis ſould tak and obſerve all lawis in thair courtis, quhen neid beis, in the ſamin maner as Baronis dois; bot that thay may not hald courtis of lyfe and lym, bot alanerlie of injurie and unreſſoun, that is to ſay, of wrang and unlaw; and the amerciamentis in thair courtis the half of the amerciament in the Baron court. *Item*, Thay that hald courtis of Knychtis quha ar callit ſubvaſſallis, aucht and ſould uſe and keip the lawis in thair courtis, as the Knychtis dois, and tak amerciamentis, *viz.* the half of the amer-

amerciamentis of the Knychtis courtis; and ſwa conſequentlie is to be underſtuid of utheris, *viz. de ſubarmigeris*, quha haldis of thame callit eſquyaris, ſall keip and obſerve the law, and ſall tak amerciament, *viz.* ane kow, ane ſcheip, or thré ſchillingis. *LL. Malc. Macken. c.* 4.

C. II. THAT na man cum to the courtis bot in ſober wayis. *Ja.* II. *fol.* 44. *act.* 93. 6 *Mart.* 1457. *Ja.* I. *fol.* 19. *act.* 120. *prim. Mart.* 1428. *Ja.* III. *fol.* 76. *act.* 123. *prim. Octob.* 1487.

C. III. THAT na man ride bot in ſober maner. *Ja.* V. *fol.* 123. *act.* 31. 7 *Junij*, 1535.

C. IV. Of the place quhair court ſould be haldin.

ITEM, It is leaſum to ony Lord or frehalder to ſet ane certane day, and than to hald his court in ony place he pleiſis, within the boundis of his awin fie and heritage, bot outwith the ſamin he may not hald court, *De jud. c.* 101. *Item*, It is defendit and forbiddin, that ony court or actioun, civil or criminal, be haldin within the kirk, kirk-zeard, or within ony uther ſacred place, *Quon. attach. c.* 91. *Item*, Gif ony manis beiſt, or uther gudis or geir, be put under pledge and ſovertie to enter to the court, the Lord of that court, or his Baillie, ſall cauſe the court to be haldin in ſic ane place quhair the beiſt or uther thing may with eaſement, and without peril or perturbatioun enter in court; and quha is convict and attachit to have maliciouſlie done utherwayis, ſall pay ane unlaw of ten pundis. *Stat. pri. R. Ro. Bruce, c.* 9. *Stat.* 2. *R. Ro. Bruce, c.* 10.

C. V. OF the time to the quhilk temporal courtis ſould be ſet. *Ja.* V. *fol.* 127. *act.* 42. 3 *Dec.* 1540.

C. VI. THAT all Schireffis, and utheris Officiaris, be preſent perſonallie at the thré heid courtis. *Ja.* V. *fol.* 127. *act.* 41. 3 *Dec.* 1540.

C. VII. The parliament, Juſtice airis, nor Chalmerlane airis, neidis not to be renewit fra day to day. *Ja.* III. *fol.* 54. *act.* 46. 20 *Nov.* 1469.

C. VIII. The memberis and keyis of court.

THE keyis of court ar thir, *viz.* 1. Ane Juſtice that is wyſe, and hes knawlege of the lawis. 2. Ane Schiref that is wyſe and faithful. 3. Ane Coroner. 4. Serjandis that ar wyſe, ſaithful and ſcharp. 5. Ane Clerk to mak and write the rollis. 6. Ane Dempſter, to beir witnes, to give dome, and keip the lawis of the court. 7. Ane aſſiſe of honeſt and lauchful men, to clenge or fyle. 8. The affirmatioun and fence of the court, that na man tak ſpeach upon hand without leave aſkit and obtenit, except the perſewar and defendar. 9. Preſentatioun of attachiamentis maid be lauchful Serjandis and Officiaris. 10. Lauchful probatioun of attachiamentis and ſummoundis, be twa ſufficient and unſuſpect witneſſis at the leiſt, quha ſould preve at quhais inſtance the ſummoundis was execute, aganis quhom, quhairin, and quhairfoir. *Diſtinct. cur. Mal. Mak. c.* 1.

C. IX. THAT Mairis and Serjandis have wandis and hornis. *Ja.* I. *fol.* 17. *act.* 110. 1 *Julij*, 1426.

C. X. OF Mairis of fie. *Ja.* I. *fol.* 19. *act.* 126. 26 *April.* 1429.

C. XI. Na man may uſe the office of ane Officiar of court, bot gif he be lauchfullie creatit.

ANE Officiar of court may not poind and diſtreinzie for ony gudis or geir, nor zit uſe ony executiounis as ordinar Officiar, without he be firſt ſolempnitlie creat in court, and ſworn leillelie and trewlie to uſe and exerce his office in all punctis concerning the ſamin: And gif he dois in the contrare, he aucht and ſould be puniſt be the Judge, and all executiounis done be him, ar null in the ſelf, and the gudis and geir that happinis to be poindit and diſtreinzeit be him, or the juſt avail thairof, aucht and ſould be reſtorit agane to the awner, als gude as thay war the time of the taking of the ſamin. 27 *Feb.* 1491, Patrick Murray *contra* Alexander Touris, 1 *t. c.* 61.

C. XII. Of the Clerk gevand furth contrare rollmentis of court.

GIF ane Clerk of the ſchiref-court, or uther court, gevis furth divers copies of ane rolment of court, diſcrepant or contrare the ane to the other, he may be callit befoir the Lordis of counſall, and rigorouſlie puniſht thairfoir. 14 *Feb.* 1523, James Meſchal *contra the Clerk of* Lanerk, 1 *t. c.* 399.

C. XIII. Na courtis may be hald in bot gif the ſchiref be preſent.

AT *Striveling, on Monounday* nixt followand the feiſt of Sanct *Margaret* the virgine, and efter the coronatioun of *Philip* King of *France*, firſt of that name, it is ſtatute, with conſent of Prelatis, Erlis, and Baronis, that Biſchoppis, Abbottis, Erlis, Baronis, nor na ſic halderis, ſall hald thair courtis, bot gif the King's Schireffis, or his Serjandis, or ſum uther of the King's Officiaris, (*Purves. Stat. Alex. c.* 17.) be preſent at the ſamin, or be ſummoundit to cum to the ſamin, to ſé if all thingis be done in the court conform to law or not: And quhen the Schiref is chargit to cum to the baron-court, and cumis not nor zit ſendis ony of the King's Officiaris, it is leaſum to the Baron to hald his court lauchfullie in preſence of honeſt and ſufficient witneſſis, without the King's amerciament and unlaw, to be upliftit fra him thairfoir. And ſiclike all uther frehalderis havand powar to hald court, may hald the ſamin, as ſaid is, without the King's amerciament and unlaw, to be upliftit fra him; reſervand alwayis to the King his amerciament and unlaw, in ſic caiſis as of the law he aucht and ſould have the ſamin. Attour, in all and ſindrie the ſaidis courtis thair ſould be four mutis and actiounis reſervit to the Kingis court, quhilk properlie pertenis to his court, *viz.* raviſhing of women, raiſing of fyre, murther, or robberie and reife. *Lib.* 4. *c.* 13. *Aſſiſ. reg. Da. c.* 1. *Stat. Alex. c.* 18.

C. XIV. ALL frehalderis ſould compeir at the heid-courtis, for ſerving of inqueiſtis and retouris. *Ja.* I. *fol.* 22. *act.* 144. 6 *Mart.* 1426.

C. XV. THAT the inhabitantis of annexit and unitit landis to utheris baronies, ſall anſwer to the juſtice-airis and ſchiref-courtis quhair the landis lyis. *Ja.* IV. *fol.* 188. *act.* 128. 11 *Mart.* 1503.

LANDIS

C. XVI. Annext landis aucht ſuit in the juriſdictioun quhairin thay ly be annexatioun.

LANDIS lyand within ane ſchiref-dome, or juriſdictioun, be natural ſituatioun, and within ane uther ſchiref-dom or juriſdictioun be unioun or annexatioun, the fré tenentis thairof aucht na ſuit, preſence, nor uther ſervice in the ſchiref-court, or ony uther court, quhair the landis lyis, bot alanerlie ſould enter, and gif the ſamin conform to thair infeftment in the court quhair the landis lyis be reſſoun of unioun. *Ult. Aug.* 1529, William *Lord* Sempill *contra* James Hamiltoun. *Ult. Maij*, 1552, David Lumiſdane *contra the Schiref of* Haddingtoun. 23 *Feb.* 1553, 1 *t. c.* 294.

C. XVII. The aith of ſuitaris of court.

THE ſuitar, or dempſtar of court ſould ſweir, that he ſall mak leill and trew record in that court, and ſall gif and pronunce lauchful and trew dome, efter the knawlege gevin to him be God; and, induring the time of his office, he ſall lauchfullie and faithfullie ſerve, efter his underſtanding, in all thingis, partis, and articlis, concerning the office of ane ſuitar. *Stat. gild. c.* 50.

C. XVIII. Quhen ane ſuitar ſould be warnit to cum to court, and quhen not.

IT is to wit, that na ſuitar is haldin to cum to his over-lordis court, bot gif he be lauchfullie ſummoundit to that effect; bot ilk ſuitar aucht to cum to thré heid courtis in the zeir, without ony ſummoundis or warning. *Mod. ten. cur. quon. attach. c.* 17.

C. XIX. The qualities of ane gude ſuitar.

NA Judge of court aucht of law nor of reſſoun till accept ony man in court as ſuitar bot him that can mak ſufficient and lauchful record of proces, domis, and judgment, and in lauchful form give dome of mutis and pleyis perſewit and defendit befoir him lauchfullie in court quhair he is ſuitar. *Item*, Ane ſuitar compeirand in court as ſuitar for ony man, ſould be ſufficientlie conſtitute and maid ſuitar be him for quhom he compeiris, and be his letter and ſeill. *Mod. ten. cur. c.* 38.

C. XX. The powar and office of ane ſuitar.

IT is leafum to all ſuitaris for Baronis that happinis to be preſent in the ſchiref-court to perſew or defend in the law, without impediment, in name and behalf of the Baron; and alſua in the abſence of the Baron, the ſuitar may, be reſſoun of his office, without ony letteris of procuratorie, repledge men to the Baronis court; bot he may not do the ſamin in ony uther place or court, without he have ane ſpecial warrant or procuratorie of repledgiatioun; nor zit may he pley in judgment, ather in perſewing or defending for ony man, without ane ſpecial mandat or procuratorie to that effect, except the Judge of the court gif him leif to do the ſamin. *Quon. attach. c.* 9. *Mod. ten. cur. c.* 18.

C. XXI. Ane ſuitar ſould not be amerciat for evil making of recordis.

NA ſuitar ſould be amerciat, ſuppois he mak not gude record of ony pley or clame proponit be ony partie in court; for gif he happinis to err and failzie thairin, he may be helpit and correctit be ony of his collegues; becauſe all ſic recordis ſould not be maid be ane ſuitar alanerlie, bot with conſent and deliverance of all and haill the ſuitaris: And mairover, the Judge, befoir he reſſave and admit ony ſuitar, ſould examine him in thré courtis, to ſé gif he can mak ſufficient recordis of court, and gif ward and dome of court on wardis, and reſſounis proponit and askit in court: And ſwa gif he be fundin ſufficient be the Judge, and the reſt of his col-

collegues, and is admittit and apprevit be thame, he ſould not thairefter be unlawit for his ignorance. *Quon. attach. c.* 20.

C. XXII. Ane ſuitar ſould give dome.

THE Judge ſould command ane ſuitar that is qualifyit, and ane abill perſoun, beand of gude fame, and weill informit, to gif the dome be ane toung and ane mouth, efter the parties ar callit agane in court to heir and ſé the ſamin. *Mod. ten. cur. c.* 36.

C. XXIII. The occupyaris of the ground beand poindit, for the releif thairof ſould be releivit be thair maiſter thairanent.

GIF ony man or tenent haldand landis heritablie, or zit in tak and aſſedatioun of ane uther, beis unlawit be the Schiref, or ony uther Judge, becauſe the ſaid ſuperiour or maiſter enterit not ane ſuit in court, as he aucht and ſould have done, he ſould be releivit and keipit ſkaithles of the ſaid over-lord and maiſter foirſaid; becauſe the immediat tenent to the over-lord ſould releive and keip ſkaithles all uther mediat tenentis at his handis anent all ſic unlawis. 6 *Mart.* 1504, James Craufurd *contra* Johne Campbell, 19 *Jan.* 1505, Andro Arnot *contra* Johne Mure, 1 *t. c.* 214.

C. XXIV. Quha ſould give ſuite in court.

NA man that is infeft be chartour and infeftment in ony landis or poſſeſſiounis, may be compellit to gif ſuite in the Kingis court, or in his Lordis court, bot efter the tenour and form of his chartour: And gif ony is infeft for certane ſervice, as for fré ſervice and payment of ane certane ſowme of ſilver, to be zeirlie payit be him *pro omni alio ſervitio*, he is not haldin nor oblift to give ſuite in court, nor do ony uther ſervice not expremit in the ſaid infeftment. *Leg. Foreſt. c.* 69.

ITEM, Our ſoverane Lord the King, for the guid univerſal of the realme, and weill of his liegis, quhilkis ar now greitlie hurt be his Officiaris, Baillies, and uther Miniſteris under his Grace, throw the calling of his ſmall portiouneris and landit men to the commoun ſuite of ſchiref-courtis, Baillie and uther courtis, quhilk may not be ſuſtenit and haldin up but greit ſkaith and inconvenientis; his Hienes, for remeid thairof, and for weill of his liegis, ordanis that in all times cuming na proprietar, tenent, nor immediat tenent to him, or portiouner within the maill of ten pundis of new extent, preſent, enter or give ony ſuite or ſuitaris befoir the Schiref, Baillies, or uther Officiaris in ony courtis, bot alanerlie thré ſuitis, at thré heid court dayis, at the principal court place of the ſchire, and ſuite in juſtice airis; and that na tenentis within fourtie ſchillingis of new extent, enter but ane ſuitar to the Schiref and Baillie courtis in the zeir, at the heid-court efter *Michaelmas*, and ane ſuitar in the time of juſtice air; and that letteris be direct under the previe ſeill, for ſpeciall diſcharge heirupon to all Schireffis, Baillies, and Officiaris, at the inſtance of all perſounis that pleiſis to have thame, to the effect abone writtin; and that all Schireffis, Baillies, and utheris Officiaris be diſchargit to unlaw ony ſic perſounis, ſmall tenentis and portiouneris, in tyme cuming, for non-entrie of thair ſuitis, except in maner and form abone expremit. *At Striveling*, 14 *April.* 1502, *et proclamatæ apud crucem fori burgi de Edinburgh*, 18 *ejuſdem menſis*, 1 *t. c.* 121.

C. XXV. Suite of courtis that is aucht

GIF ony heritage or landis, for the quhilk ane ſuite alanerlie ſould

of divers persounis.

ſould be gevin in court, be devolvit and pertene be ſucceſſioun to divers and ſindrie airis or heretrices, the air that has the cheif and principal part of the ſaid heritage, (that is the eldeſt air or ſiſter) ſall give ane cheif ſuite for himſelf, hirſelf, partneris or colleguis. *Leg. foreſt. c.* 70.

Item, Divers and ſindrie perſounis beand infeft in ony heritage or landis, quhilk ſould give ane ſuite alanerlie, the over-lord ſould not have, nor may not ask bot ane ſuite thairfoir. And gif the ſaidis perſounis that ar infeft hes not ane warrant, quha ſould releive thame fra geving of the ſaid ſuite, thay all ſould contribute for geving of the ſaid ſuite, ilk ane for thair awin part. *Leg. foreſt. c.* 70.

C. XXVI. The frank tenementar ſould give ſuite, and not the fear of the landis.

GIF ony man haldand landis of the Kingis Grace, for the quhilk he aucht to give ſuite and preſence in his Hienes court or juſtice air, puttis his ſone in fie of his landis, to be haldin of himſelf, he aucht and ſould enter ſuite and give preſence as immediat tenent to the King and his ſone, fear of the ſaidis landis, his gudis or geir on na wayis ſall be poindit or diſtreinzeit thairfoir. 8 *Julij*, 1501, 1 *t. c.* 275.

C. XXVII. Suite in court for annexit landis ſould be gevin efter the ſpecial proviſioun of the infeftment.

GIF ony man hes divers and ſindrie landis lyand diſcontigue, unite and annexit in ane baronie, with ſaſine takin at ane certane place thairof, to be ſufficient for all and haill the ſaidis landis, nevertheles gif it be not ſpeciallie provydit in his infeftment that ane ſuitar ſall be ſufficient for all and haill the ſaidis landis, he aucht and ſould enter in the Schiref court als mony ſuitaris for the ſaidis landis as gif the ſamin had not bene unitit and annexit. 17 *Junij*, 1556, *The Lord* Fleming *contra the Lord* Zeſter, 2 *t. c.* 264.

C. XXVIII. The ſuite ſould be gevin in court according to the number of infeftmentis.

ANE tenent or vaſſal haldand landis be ſervice of ward and releif, and thairfoir bund and obliſt to give ſuit in his ſuperiouris court or juſtice air, aucht and ſould give als mony ſeveral ſuitis thairfoir in ilk court as he hes divers and ſindrie infeftmentis of landis; becauſe multitude of infeftmentis inducis and importis multitude of ſuitis. 20 *Feb.* 1539, 1 *t. c.* 1039.

C. XXIX. Of him that awis thré ſuitis alanerlie in the zeir.

GIF ony man haldis of ane ſuperiour landis in blanche ferme, for thré ſuitis in his ſuperiouris court, he aucht and ſould ſend his ſuitar to his ſaid ſuperiouris thré courtis in the zeir: And gif he failzie to do the ſamin, his landis, gudis and geir may be poindit and diſtreinzelt for ane unlaw of fortie ſchillingis for ilk ſuit of the ſaid thré ſuitis, quhilk he failzies to enter in the ſaid court: And as concerning preſence, the ſaid tenent is not haldin to give ony, ather be himſelf or his Actornay, in his ſuperiouris court, Schiref court, or juſtice airis; becauſe he that haldis in fré blanche aucht to give na preſence for him nor his tenentis thairfoir; nor he, his landis nor gudis ſould be diſtreinzeit for not geving and entring of the ſamin. 18 *Novemb.* 1502, Johne Semple *contra Lord* Drummond. 24 *Jan.* 1535. 16 *Feb.* 1561, Robert Cairncorſe *contra the Erle of* Mortoun, 1 *t. c.* 249.

Item, Gif ony perſoun have ony ward landis or blanche ferme landis lyand within ane ſchirefdome, or ony uther juriſdictioun, for the quhilk he is bund and obliſt to give ſuite and preſence in the

court of the ſaid ſchirefdome or juriſdictioun, he on na wayis may be compellit to give ony preſence within the court of the ſamin, bot onlie to enter the ſuit or ſuitis be himſelf or his Actornay, as he is bund and obliſt to do. 18 *Novemb.* 1502, Johne Sempill *contra* *L.* Drummond. 24 *Jan.* 1535. 16 *Feb.* 1539. 28 *Feb.* 1561, Robert Cairncorſe *contra the Erle of* Mortoun, 1 *t. c.* 249.

C. XXX. Of over-lordis that diſtreinzeis thair tenentis for ſuite of court.

GIF the over-lord poindis and diſtreinzeis his tenent, his gudis or geir, for ſuitis of court, aganis law and reſſoun, he may be attachit and chargit at the tenentis inſtance, to compeir within ane ſchort day in the Kingis court, to anſwer heiranent; and incontinent the gudis and geir, gif ony was takin and poindit be him for the cauſe foirſaid, ſould be reſtorit and deliverit to the tenentis fra quhom thay war tane, to remane with thame untill the pley and contraverſie betwix thame and thair ſuperiour be finallie endit: And gif the ſuperiour failzies to compeir at the day to the quhilk he was attachit, command and charge ſall be gevin to the Kingis Schiref to compell him to compeir at ane uther day; at the quhilk gif he failzies to compeir, the Schiref ſall be chargit to poind and diſtreinzie all movabill gudis and geir pertening to the ſaid over-lord, and that may be apprehendit within his ſchirefdom, and to mak compt and rekning of the iſches and profitis thairof to the King, and to affix and appoint ane certane day to the ſuperiour to cum and releive his ſaidis gudis and geir; the quhilk gif he failzies to do, the Schiref ſall mak compt and rekning to the King of the ſamin; and the ſaidis poindis that war takin fra the tenentis, and thairefter deliverit to thame, ſall remane with thame untill the ſuperiour recover his ſuite, and lauchfullie preive be the law and conſuetude of this realme, that he hes gude titill and richt thairto: And in the mean time, quhill he preive the ſamin, it ſall not be leaſum to him to poind or diſtreinzie the ſaidis tenentis or vaſſallis gudis for ſuite of court; bot fredome and libertie ſall be reſervit to him to poind and diſtreinzie thame for ſuite of court, gif he previs as effeiris of the law in ony time efterwart, quhen he pleaſis, that the ſaid tenentis ſould give him ſic ſuite of court as he requirit of thame: And gif he at ony time efterward comperis, beand callit, as ſaid is, at his tenentis inſtance, to anſwer anent the ſaid poinding, and happinis to be convict thairintill, his tenentis and vaſſallis ſall recover fra him the damnage ſuſtenit be thame, throw occaſioun of the ſaid poinding maid be him, *Leg. foreſt. c.* 70.

Item, Gif the tenentis or vaſſallis wrangouſlie abſtractis, or refuſis to give thair ſuitis, quhilk thay aucht in the courtis of thair overlordis, thay may be callit with ſic celeritie and ſchortnes of time to certane dayis, and may be poindit and diſtreinzeit thairfoir be thair over-lordis in maner abone reherſit; and thay being convict to have done wrang in abſtracting and delaying thair ſuitis, thair over-lord ſall have ſic juſtice aganis thame, and ſall recover fra thame his damnage and ſkaith ſuſtenit be him throw thair ſaid delay and refuſe, in the ſamin maner as is abone ſaid of the tenentis ſkaith and damnage recoverit be thame fra thair over-lord: Bot it is to wit, that the over-lord has na titill nor actioun aganis the tenentis for ony damnage or ſkaith ſuſtenit be ony of his predeceſſouris, throw ab-

abſtracting of the ſaidis ſuitis, bot for ſic alanerlie as he himſelf hes ſuſtenit thairthrow. *Leg. foreſt. c.* 71.

C. XXXI. Blanche landis aw na preſence nor ſuite.

NA preſence aucht or ſould be gevin in the Schiref court for ony landis lyand within the ſchirefdom, and haldin in fré blanche ferm; and the proprietar of the ſamin, nor his tenentis dwelland upon the ſaidis landis, may on na wayis be poindit or diſtreinziet in thair gudis or geir thairfoir, 24 *Jan.* 1535, *L. of* Quhittinghame *contra Schiref of* Hadingtoun. 23 *Jan.* 1540, 1 *t. c.* 482. *Item*, Gif ony Baron, frehalder, or uther perſoun haldis his landis in blanche ferme, he may not be compellit to enter ony ſuite, or give preſence thairfoir in his ſuperiouris court, Schiref court, or juſtice air, except ſpecial proviſioun be maid in the contrare in his infeftment. 27 *Novemb.* 1555, Alexander Acheſone *contra Schiref of* Lanerk, 1 *t. c.* 1138. And gif he dois in the contrare, and enteris ony ſuitis or preſence for the ſaidis landis, he thairby prejudgis and hurtis himſelf anent the form and maner of halding of his landis, ſwa that thairefter he nor his airis may not alledge the ſamin to be haldin in blanche ferm as thay war of befoir. 7 *Jan.* 1510, *The King* contra *Schiref of* Berwick, 1 *t. c.* 160.

C. XXXII. Quha may ſpeik in court.

EFTER the court is affirmit and defendit, na perſoun aucht to ſpeik or intromet betwix the parties, bot alanerlie the perſewar and defendar, thair foirſpeikaris, and thair counſall, except in the time of the geving of the ſentence or wardis (interloquitouris or ſentences) of the court; at the quhilk time it is leaſum to ilk man that is ſuitar in the court to propone his reſſounis, and ſchaw his judgment for declaratioun of the ward and dome. *Quon. attach. c.* 19. *Mod. ten. cur. c.* 36.

C. XXXIII. Pane of him that troublis the court.

GIF ony man happinis to diſtroubill ony court within this realme, fenſit in the Kingis name, in preſence of the Judge, thairthrow contemnand and lichliand the Kingis authoritie and brekking of his peace, the ſamin beand ſufficientlie provin, his perſoun ſall be put in ward, and thair to remane upon his awin expenſis, quhill he be freed be the King. 13 *Aug.* 1479, *The King and his Grace's Advocate* contra Alexander Home, 1 *t. c.* 18.

C. XXXIV. For quhat cauſe ane may tyne powar of halding of courtis.

HE quha hes powar to hald court may tyne and foirfault the ſamin for the ſpace of zeir and day, gif he haldis the court in time forbiddin and defendit be the law, that is to ſay, fra *Zule* girth be proclamit, quhill efter the halie dayis, *viz.* fra the ſevint day befoir *Zule* unto uphalie day, *De except. c.* 11. *Ex lib. Sconen.* Or within the time of harveſt, or befoir the Schireffis thré heid courtis, except gif ſic courtis be haldin at ſic times, upon ane breif of richt, the quhilk ſould have proces at all times of the zeir, fra fiftene dayis to fiftene dayis. *Quon. attach. c.* 3. *Mod. ten. cur. c.* 12.

Anent

Anent Jugeis.

C. I. The properties of ane Judge.

IN the electioun and admiſſioun of ane Judge, four principal properties ſould be conſiderit: 1. That he be godlie, and have the fear of God in his heart, and befoir his eyis. 2. That he be wiſe and learnit. 3. That he be ane favorer and followar of the veritie and treuth. 4. That he be ane hater and deteſter of avarice and filthie gane: Or utherwayis, ane Judge that wantis thir properties is like a ſword infectit with poyſon; and to commit adminiſtratioun of juſtice in his hand, is alike as to pour pure oyle in ane burnand furnace, *De maritag. c.* 2. And thairfoir ane richteous Judge ſould have ane balance in his hand, and wey the law equallie to all men, without exceptioun of perſounis; for nathing is mair wickit nor to tak buddis and giftis for judgment; becauſe buddis and giftis blindis the heartis of the wiſe men, and ſtoppis and deſtroyis the wordis and doingis of the juſt, and thairfoir all Jugeis ſould bewar, for as thay judge ſwa ſall thay be judgit, and ſiclike judgment as thay give, ſic ſall thay reſſave; thairfoir thay ſould doubt and feir God, quha is Judge over all Jugeis, that be his judgment thay be not condampnit. Na King, Prince, nor Governour, ſould mak ane fule, or ane unworthie or greidie perſoun, ane Judge; for ane fule, throw his ignorance, and a greidie bodie, throw covetouſneſs, overthrowis juſtice and richt, *De jud. c.* 1. *Stat. Will. c.* 27. *Mod. ten. cur. c.* 19. The quhilk may be overthrowin and miſgovernit four maner of wayis: 1. Throw fear and dreadour; quhen the Judge daris not richtlie judge for fear of ane michtie and potent perſoun. 2. Throw covetouſneſs; quhen the Judge is corruptit with buddis and brybis. 3. Throw haitrent; quhen the Judge dois harm or hurt to ony innocent perſoun, in reſpect of haitrent quhilk he bearis toward him; or quhen the Judge, for invy conſavit aganis ony man, inventis ony wrangous way or cauſe to give unjuſt judgment aganis him. 4. Throw love; quhen the Judge throw favour and freindſchip defendis his freind, and oppreſſis his enemie by the law: And thairfoir it is the office and dutie of all richteous Jugeis to do juſtice, and ſé that nather of the parties pley-and befoir him in judgment reſſave ony wrang, or be oppreſſit aganis the courſe of the law. *Mod. ten. cur. c.* 19. *De jud. c.* 61. *De maritag. c.* 4.

C. II. OF the Miniſteris of law within the realme, and offices gevin in heritage. *Ja.* I. *fol.* 2. *c.* 6. 26 *Maij*, 1424. *Ja.* II. *fol.* 28. *act.* 13. *in medio.* 19 *Jan.* 1449.

C. III. The office of ane Judge. IT is the Kingis will and command, that all Jugeis miniſter juſtice equallie, als weill to the puir as to the rich, conform to the lawis of the realme, *Stat.* 2. *Ro. Bruce, c.* 12. *Item*, It is defendit and forbidden, that the Chancellar, Chalmerlane, Juſtice, Schiref, or ony uther Judge, thair deputis or Clerkis, or ony uther Officiaris of law, be mantenaris of ony complaint, pley, or actioun, movit befoir thame in the Kingis court, *Stat.* 1. *Ro. Bruce, c.* 15. *Stat.* 2. *Ro. Bruce,*

Ro. Bruce, c. 22. For ane Judge is not ſet in judgment to mantene ony partie pleyand beſoir him in court, bot for to be ane evin and equal Judge to all perſounis; and thairfoir he ſould be readie to reſſave borghis and pledgis lauchfullie offerit beſoir him in judgment be ony partie alledgeand him to be hurt and ſkaithit throw geving of judgment be him, and promiſis to call and perſew for reductioun thairof: And notwithſtanding, the Judge ſall cauſe the rolmentis of the proces led and deducit beſoir him be deliverit to the partie requirand the ſamin, upon his reſonabill coſtis and expenſis. *Mod. ten. cur. c.* 19.

C. IV. The Judge may inform the ſuitaris of the court.

ITEM, It is leaſum to all Jugeis of courtis to inform the ſuitaris that ar not weill expert and learnit in geving of wardis and domes, that thay be fullilie accordit amangis thameſelfis, beſoir the parties enter in court, to heir the geving of the judgment, that thay may give the ſamin in lauchful form: Bot efter the parties be enterit in court, to heir and ſé the judgment, it is not leaſum to the Judge, nor to ony ſuitar, to prompt or privilie inform him that ſall give the dome; for the law ſayis, that ilk lauchful judgment ſould be gevin and zeildit cleirlie out of ane mouth, and be ane toung. *Mod. ten. cur. c.* 18. *Quon. attach. c.* 10.

C. V. The Judge may continue the dome, and the cauſe thairof.

GIF the judgment be aſkit be ather of the parties in ony actioun or cauſe dependand in court, and the court has continewit and reſpeitit the ſaid cauſe for better adviſement, anis, twiſe, thriſe, as thay may do of the law; gif the ſuitaris on the feird day allege that thay ar not reſolvit, nor can give dome; ilk ane of thame ſould ſweir the ſamin be aith ſolemnitlie, and then the ſaid judgment ſall be transferrit to the immediat ſuperiour Judge, to be decernit and judgit be him in his court, in preſence of baith the parties, *Quon. attach. c.* 8. *Mod. ten. cur. c.* 17. *Item*, Actiounis and cauſis dependand in judgment, may be reſpeittit and put under continuance thré times, for waiknes or inlaik of ſuitaris, or of gude counſal, or be reſſoun of the Kingis ſervice, or commoun weill of the realme, be reſſoun of weir. *Diſtinct. Mal. Mak.*

C. VI. The Judge ſall accompany the King.

IT is ſtatute and ordanit, at *Montroſe*, that quhen the King cumis in ony province, the Jugeis of that province ſall cum to him the firſt nicht, and ſall not pas away fra his court ſa lang as he remanis in that province, without ſpecial licence askit and obtenit fra him: And gif ony of thame paſſis away without licence, he ſall pay ane unlaw of aucht ky to the King. *Quon. attach. c.* 80. *Aſſiſ. Reg. David. c.* 20.

C. VII. How Jugeis ſould execute the Kingis mandat.

IT is ſtatute and ordanit in the parliament haldin at *Scone*, the fourtie zeir of the reigne of King *David*, that the Kingis Juſtice, Schiref, nor na uther Judge or Officiar of law, ſall put to executioun ony command direct to thame under the greit ſeill, privie ſeill, ſecreit ſeill, or ſignet, contrare to law, equitie and juſtice: And gif ony ſic mandat be preſentit unto thame, thay ſall writ upon the bak thairof, and ſend the ſamin agane. *Aſſiſ. Reg. David. c.* 40.

C. VIII. The aith of all ordinar

ITEM, It is ſtatute and ordanit, that in all times cuming all and

Jugeis at thair creatioun.

ſindrie Jugeis ſelectit and choſin to decide and decern ony cauſe or complaint, ſall ſolemnitlie ſweir at the time of thair electioun and creatioun, upon God's halie evangel, that thay ſall give dome, and decern all and ſindrie actiounis and cauſis to be proponit befoir thame, efter thair knawlege, trewlie and lauchfullie, without feid, favour, fraud, cullour or deceipt, *Ja.* I. *fol.* 14. *act.* 93. 1 *Julij*, 1426. To all and ſindrie our ſoverane Lordis liegis, als weill pure as rich, without exceptioun of perſounis, as thay will anſwer to the eternal God, quha is Judge of all Jugeis, and to our ſoverane Lord the King, thairupon, 5 *Decemb.* 1561, *The Quenis Advocate* contra John Weymis, 1 *t. c.* 1267.

C. IX. The pane of him that pleyis not befoir his Judge ordinar.

GIF ony man beand of ony Lordis juriſdictioun, complene or perſew ony actioun or cauſe pertening to his Lordis court, befoir ony uther Judge, his Lord may unlaw and amerciat him, conform to the unlaw of his court, as ane quha wald have abſtractit the commodities and liberties pertening to his court, *Lib.* 4. *c.* 34. *Quon. attach. c.* 39. And mairover, he that pleyis befoir the ſaid Judge, thairby tynes and foirfaltis all fredomes and liberties of his tenement and landis, quhilk he haldis of the ſaid over-lord, *Quon. attach. c.* 39. *Item*, It is ſtatute and ordanit, that na man within this realme complene for ony caus or treſpas done to him be ony man, befoir he complene to his awin proper over-lord, or to his Baillie; and gif thay failzie to do him law and reſſoun, thay ſall give to the King aucht ky: And this on na wayis ſould be underſtuid of the greit and principal cauſis that of law pertenis to the Kingis crown. *Aſſiſ. Reg. David. c.* 7. *Purves. Ja.* I. *fol.* 7. *act.* 49. 12 *Mart.* 1424. *Ja.* III. *fol.* 59. *act.* 69. 9 *Maij*, 1474, *& fol.* 76. *act.* 124. 1 *Octob.* 1487.

C. X. *Ratione rei, ſen delicti, quis ſortitur forum.*

GIF ony perſoun havand or not havand ane dwelling-place without the juriſdictioun, committis ſpuilzie or ony uther treſpas within the juriſdictioun of ane uther Judge, for the quhilk he may be callit and convenit in judgment, he may be perſewit be ony havand intres befoir the Judge of the ſaid ſchirefdom or juriſdictioun, *ratione rei de qua agitur.* 23 *Junij*, 1543, John Tenent *contra Capt.* Lundie, 2 *t. c.* 146.

C. XI. *Ratione contractûs, quis ſortitur forum.*

GIF ony perſoun dwelland without the juriſdictioun of ane Judge, be auchtand ony ſowmis of money, or uther debt, to ony man dwelland within the ſamin, and promiſis him payment thairof within that juriſdictioun, or utherwayis contractis with him thairanent, he may be callit and perſewit befoir the ſaid Judge thairfoir, be reſſoun of his promiſe and contract. 13 *Mart.* 1534, 1 *t. c.* 1006.

C. XII. He quha is not Judge principal to ony man, may be Judge to him in cauſe of warrandice.

QUHEN ony man is callit for warrandice in ane actioun or cauſe befoir ane Judge, albeit the Judge wald not be competent to him, he beand callit and perſewit in the principal cauſe, zit nevertheles, be reſſoun of the warrandice, he is Judge competent to him; as gif ane man dwelland in the regalitie be callit be ane uther dwelland in the royaltie, befoir the Schiref for warrandice, the ſaid Schiref is Judge competent to him in the cais of warrandice, albeit he be not uther-

utherwayis under the Schireffis juriſdictioun. 22 *Junij*, 1532, 1 *t. c.* 1001.

C. XIII. Of ane dwel-land without juriſdictioun, pleyand for landis within the ſamin.

LANDIS lyand within the ſchiref dome, gif certane perſounis contendand thairfoir dwellis within ane other ſchirefdome, thay may not be compellit to pley within the ſchirefdome within the quhilk the landis lyis. 15 *April.* 1559, Elizabeth Hamiltoun *contra* Marion Cambell, 1 *t. c.* 1237.

C. XIV.

NA perſoun may be Judge, Procuratour, nor member of court, quha profeſſis not the religioun, *Ja.* VI. *fol.* 12. *act.* 9. 15 *Decemb.* 1567.

C. XV. Quhat perſounis ar forbiddin to be Jugeis.

THIR perſounis under writtin may not be the law be Jugeis, *viz.* He that is excommunicat and curſit, and not ordourlie abſolvit thairfra, *De except. c.* 1. *Ex lib. Sconen. Item*, He that was or is procuratour in ony cauſe or actioun, may not be Judge in the ſamin, *De except. c.* 1. *Ex lib. Sconen.* Attour, gif the Judge makis a depute under him to cognoſce in ony actioun or cauſe, and the court beand fencit in his name, thairefter paſſis and procuris as Advocate or Foirſpeikar for ony of the parties, the proces, ſentence, and all that followit thairupon, is of nane avail, 12 *Feb.* 1495, Ja. Stewart *contra Schiref of* Banf, 1 *t. c.* 86.

Item, Na man may be Judge amangis parties in ony cauſe, gif he be within degré defendand of blude or affinitie to the perſewar, to wit, within the feird and thrid degreis *incluſivè*, ather in affinitie or conſanguinitie, gif the defendar oppone and reckon the ſamin in judgment: And gif the ſaid Judge proceidis in the contrare, notwithſtanding the ſaid alledgeance and rekning, the proces is null and of nane avail in the ſelf, and aucht and ſould be reducit: And it is to be underſtuid concerning the degreis of affinitie, that the Judge, or quhatſumever uther perſoun, is als ſib and neir in degreis of affinitie to the perſewar as he is of conſanguinitie to his wife; and likewayis he is als ſib and neir in degreis of conſanguinitie as he is to his wife in affinitie, 12 *April.* 1511, 1 *t. c.* 168.

Item, He may not be ane Judge quha is freind or familiar to the perſewar, or his enemie, or couſing or kinniſman to his enemie, or his lord or maiſter, or his vaſſal or tenent, or his man, born, or be band, or remaneand within his ground, or ſervand havand fie, profit or commoditie of him. *Item*, He may not be Judge quha has ony actioun or cauſe perſewit at ony uther manis inſtance, gif he that is Judge has ony uther actioun dependand befoir the ſaid perſewar, as Judge. *Item*, He that is minor, within the age of twentie five zeiris. *Item*, He that is deif, lunatique perpetuallie, or at ſum times furious or wod. *Item*, Ane heretique may not be ane Judge. *Item*, Ane woman is forbiddin of the law to be ane Judge. And ſiclike, eccleſiaſtical perſounis may not judge in temporal cauſis. *De except. c.* 18. *Ex lib. Scon.*

Item, He may not be Judge to quhom the partie dar not cum for feir and danger of his life, albeit he have letteris of ſaif conduct. Likewayis he is a ſuſpect Judge quha has the like cauſe of his awin dependand in judgment, *De except. c.* 8. *Ex lib. Scon.* or hes takin part with the partie, or gevin him partial counſal; or he that

is

is unlauchfullie gottin, as baſtard; or he that is menſworn and convict of perjurie; or he that is convict of treaſoun.

Item, He that is Judge commiſſioner, and hes not ſufficient document to ſchaw quhair he is ſworn to miniſter juſtice in his office; or gif he was ſumtimes furious, *habens intervalla dilucida*; or zit under cure of follie or furioſitie; or gif he may report ony profit of that cauſe; or gif he has tane reward, or promiſe of reward, as Judge in that cauſe, as in the proces of the breve of perambulatioun. *Item*, Na man may be Judge in ony cauſe, bot gif the defendar be within his juriſdictioun, be reſſoun of his dwelling-place within the ſame, or in reſpect of contract or obligatioun maid thair; or be reſſoun of treſpas committit within the boundis thairof; or in reſpect of the thing that is askit and clamit, quhilk is and lyis within his juriſdictioun; becauſe the perſewar ſould follow the defendar's juriſdictioun, and perſew him befoir his awin competent Judge.

C. XVI. A ſuſpect Judge may be removit.

QUHEN ony judgment is askit betwix twa parties in court, and the Schiref, or uther Judge of the court, is ſuſpectit be ony of the parties, he that ſuſpectis him may lauchfullie deſire him to be removit out of court, until the ward and judgment of the court be diſcuſt; and thairefter the Judge ſall be callit agane in the court to ſit and heir the dome gevin betwix the parties; for it is generallie to be underſtuid that na ſentence or dome ſould be gevin betwix the parties, bot gif the Judge be ſittand in the court the time of the geving thairof; for be the law, dome gevin without a Judge ſittand at the ſamin time, is na dome; bot efter the dome and ſentence is adviſit, diſcuſſit, and in the Judge's abſence readie to be pronuncit, he, efter his returning in court, may not in ony wayis change, alter or ſtop the ſamin, to be pronuncit conform to the ordinance and adviſement of the ſuitaris of court. *Quon. attach. c.* 10. *Mod. ten. cur. c.* 19.

C. XVII. Anent the punitioun of Officiaris treſpaſſand in thair office wilfullie or negligentlie.

Ja. II. *fol.* 43. *act.* 87. 6 *Mart.* 1457, *& fol.* 29. *act.* 16. 19 *Jan.* 1449. And thairfoir, gif ony Proveſt or Baillies of ony burgh or citie, or ony uther Judge, dois not thair office in the adminiſtratioun of juſtice to ony partie deſyrand thame to do the ſamin, tuiching landis, tenement, or ony uther thing within thair juriſdictioun; the ſaidis Proveſt and Baillies ſall not onlie pay the damnage, ſkaith and expenſis ſuſtenit be the ſaid partie complenar in thair default, throw the non-executioun of thair office, togidder with ane unlaw of fourtie ſchillingis; bot alſwa, for contemptioun of the King's Hienes and juſtice, thay may be chargit to enter thair perſounis in ward, thair to abide and remane upon thair awin expenſis, quhill thay be fred be the King, and puniſht for thair contemptioun. 24 *Octob.* 1489, Johne Carmichael *contra the Proveſt and Baillies of* Sanctandrois, 1 *t. c.* 43.

C. XVIII. The Judge ſould purge him of partial counſal.

GIF ony partie in judgment object aganis the Judge, that he has gevin counſal to his partie adverſare, the Judge aucht and ſould purge himſelf thairanent: And gif he refuſis to do the ſamin, the proces, ſentence, and all that he dois, is of nane avail, force nor effect. 18 *Novemb.* 1503, *L.* Staniewod *contra Schiref-depute of* Abirdene, 1 *t. c.* 303.

c. 303. Gif ony Lord of ſeſſioun, or uther Judge within this realme, ſay to ony partie or his procuratour, that he micht have better libellit, or zit anſwerit better to the libel intentit aganis him nor he did, he, as ſuſpect and partial in the cauſe, may be removit at the deſire of the partie. 15 *Feb.* 1532, *Maiſter of* Glencairne, *contra Priour of* Sanctandrois, 1 *t. c.* 434.

C. XIX. The pane of a Judge that takis buddis.

IT is ſtatute and forbiddin, that the Chancellar, Chalmerlane, Juſtice, Schiref, thair deputis or Clerkis, nor zit ony uther Officiar of law within this realme, ſall tak ony landis, or ony uther gudis or geir, for delay or hinder of juſtice, or of ony manis actioun or cauſe: And gif ony dois in the contrare, and is convict thairof, he ſall be in the Kingis will, and ſall tine his office in all time cuming. *Stat.* 1. *Ro. Bruce, c.* 15. *Stat.* 2. *Ro. Bruce, c.* 21.

C. XX. The pane of the partial Judge.

NA Judge ſould mak himſelf partie in ony pley or cauſe intentit or perſewit befoir him, nor zit in ony wayis ſould mak perſute or defence for ather of the parties. Na perſoun ſould intromet betwix the parties in thair pley, bot the parties thameſelfis, and thair counſal, *Mod. ten. cur. c.* 18. *Quon. attach. c.* 10. And gif ony of the Kingis Jugeis within this realme dois in the contrare malicioufflie, and is convict of his partialitie, he ſall be puniſt be the King, *viz.* he ſall tine all the gudis that he has, togidder with his office; and mairover his life ſall be in the King's will: And gif the ſamin happinis to be done in the court of Erle, Baron, Knicht, or ony uther frehalder, the Lord of that court ſall foirfalt and tyne his court, and powar of halding thairof, the quhilk ſall pertene and remane in all time thairefter with the King, except he of his ſpecial grace and favour reſtoir and give agane the ſamin. *Diſtinct. Mal. Mak. c.* 3. *Ja.* III. *fol.* 51. *act.* 34. 20 *Novemb.* 1469. *Ja.* V. *fol.* 137. *act.* 84. 14 *Mart.* 1540.

C. XXI. The pane of ane falsJudge.

GIF ony Judge is convict to have gevin falſe judgment at thré continual times, he ſall be deprivit fra geving of judgment, and exercing the office of ane Judge in all time efterwart: And alſo he may not be ane procuratour, nor zit ſtand in judgment, except he do the ſamin of the King's ſpecial grace, licence and mercie. *De jud. c.* 55.

C. XXII.

OF the qualities and aith of deputies to Schireffis, and utheris Officiaris. *Ja.* V. *fol.* 127. *act.* 43. 3 *Decemb.* 1540.

C. XXIII. Of ane Judge depute.

ANE depute to ony Judge is underſtuid to be lauchfullie depute, gif he hes uſit the office of deputrie be the ſpace of certane zeiris, and was haldin and repute as depute; or gif he hes commiſſioun gevin to him be the principal Judge, without ony certane time and place limitat thairin, zit ſtandand undiſchargit. 18 *Maij*, 1502, *The* Ingliſmen *contra Proveſt of* Aberdene, 1 *t. c.* 1392.

C. XXIV.

THAT na commiſſioun be gevin in prejudice of the Judge ordinar. *Ja.* V. *fol.* 129. *act.* 52. 3 *Dec.* 1540.

C. XXV. A Judge delegat ſould be ſworn.

GIF ane Judge delegat, or ane Schiref in that part, creat ony mem-

memberis of court, befoir that the commiſſioun be gevin and preſentit to him; or procede to ony act judicial, befoir the geving of his ſolemne aith for adminiſtratioun of juſtice; all the proces led befoir is null, invalid, and of na effect in the ſelf. 10 *Octob.* 1478, James *Lord* Hamiltoun *contra* James *Lord* Levingſtoun, 1 *t. c.* 12. 14 *Mart.* 1504, Robert Bruce *of* Stanehous *contra* Duncan Foreſtar. 19 *Decemb.* 1505, *The King, and* George *Maiſter of* Angus *contra Schiref of* Bervick, 1 *t. c.* 218.

C. XXVI. Of divers Commiſſioneris Jugeis.

GIF ony commiſſioun be direct be the Lordis to divers perſounis, makand thame Schireffis in that part in ony actioun or cauſe, and ane of thame give ſentence or decrete without the reſt, the ſamin is of nane avail; becauſe he beand alanerlie bot ane colligue adjoinit to the reſt, hes na powar to give ony decrete without thair conſent. 10 *Julij*, 1558, Robert Henriſone *contra* James Fiddes, 1 *t. c.* 1219.

C. XXVII. Of injurie done to ane Judge.

GIF ony man miſſayis ane Judge or his deputis in court, in doing of his office, he ſall in the ſamin place cry him mercie for his fault, and ſall mak him ane amendis thairfoir at the Judge's inſtance, deſyrand the ſamin; and efter the amendis is maid, he ſall ſweir on the halie evangel, that he thairefter ſall nather heir nor ſé the ſaid Jugeis ſkaith nor ſchame, bot gif he may, to lett it, efter his micht, or than in time warn him thairof, that he may eſchew the ſamin. *Quon. attach. c.* 23. *Mod. ten. cur. c.* 42. *Ja.* V. *fol.* 138. *act.* 84. *in fine.* 14 *Mart.* 1540.

Anent Ambaſſadouris.

C 1. Of privilege grantit to Ambaſſadouris.

GIF ony man be abſent furth of the realme in ambaſſadrie, or utherwayis imployit in effairis concerning the comoun weill, or the effeiris or ſervice of the Prince, all actiounis and cauſis intentit aganis him befoir his departure, or thairefter, togidder with all executiounis of decreittis or letteris raiſit or obtenit aganis him, ſould ceis and have na proceſs until his returning within this realme, and fourtie dayis thairefter, 18 *Feb.* 1533, David *Commendatar of* Aberbrothok. The quhilk privilege and immunitie is in like maner grantit and extendit to all thame that paſſis reallie, and remanis actuallie with him, *viz.* ſic as ordinaris in his companie. 21 *Jan.* 1533. 26 *Jun.* 1534. 7 *Decemb.* 1549, 1 *t. c.* 527. Bot the ſamin ſall na wayis ſerve nor be helpful to ony Ambaſſadour that is to pas furth of the realme, nor to ony partie that ſould pas and remane with him in companie, anent ony actioun of partie for ſlauchter, mutilatioun, or ony uther crime committit be him, or ony of thame, ſen the granting of thame the ſaid privilege, except ſpecial diſpenſatioun be contenit in his privilege thairanent. *Ult. Julij*, 1535, 1 *t. c.* 1023.

Anent

Anent aſſiſe.

ALL and ſindrie perſounis that ar reſſavit and admittit to paſs upon aſſiſe, ſould ſweir, that tuiching the actioun and cauſe that is put to the knawlege of ane inqueiſt, thay ſall not fuith, conceal, lie, nor fals ſay efter thair witting: And it is requirit, that thay quha ſweir, ſall ſweir that thay have knawlege of the ſamin thing be thair ſicht or heiring, or be report and reherſe of thair foirbearis, or uther famous perſounis, *Lib.* 1. *c.* 14. *Ja.* I. *fol.* 24. *act.* 155. 22 *Octob.* 1436. C. I. The aith of aſſiſouris.

PERSOUNIS paſſand upon ane aſſiſe, that will not deliver the firſt day *affirmativè* or *negativè*, upon the punctis of the breive, may be chargit be the Lordis letteris, raiſit at the parties inſtance, to convene ane uther day, to deliver upon the ſamin. And ſiclike, gif thair deliverance be obſcure, and not cleir in the ſelf, the Lordis of ſeſſioun, at the deſire of the partie, may ordane the Schiref, or Judge, to incloſe the perſounis of inqueiſt, thair to remane, quhill thay have cleirlie deliverit in the matter. 28 *Jan.* 1533. 25 *Julij*, 1535. C. II. Quhairfoir ane aſſiſe may be incloſit.

GIF the perſounis of inqueiſt be chargit to incloſe thameſelfis untill thay deliver *affirmativè* or *negativè* upon the punctis of the breive, and it be ſufficientlie provin beſoir the Judge that ony ane man of thame is deid, ſeik, or furth of the realme, the Judge may cheiſe and elect utheris unſuſpect perſounis to pas upon the aſſiſe in thair place. 23 *Mart.* 1541, 1 *t. c.* 1073. C. III. Gif ony of the inqueiſt has juſt cauſe of abſence, the Judge may ſurrogat ane uther.

THE defendar in the ſummoundis of errour ſould be warnit with certificatioun: The perſewar not perſewand may be unlawit. *Ja.* IV. *fol.* 93. *act.* 58. 18 *Maij*, 1491. C. IV.

GIF ony matter be put to the knawledge of ane inqueiſt, and that the ſaid inqueiſt happinis to commit errour, quhairupon thay may thairefter be convict for thair inordinat and wrangous deliverance upon the punctis of the breive; gif ony of thame, ane or ma, oponis thameſelfis the time of the ſerving thairof aganis the ſaid erroneous deliverance, and proteſtis that thay conſent not thairunto, the ſaidis opponaris ſall incur na damnage nor ſkaith be reſſoun of ony errour committit be the remanent perſounis of the aſſiſe and inqueiſt, 19 *Maij*, 1491, Arthure Forbes *of* Reres *contra* Diſchingtoun, *and the remanent perſounis of inqueiſt.* And gif it happinis the ſamin perſounis to be put in the retour with the reſt that ſervit, and be callit be ſummoundis, and convict of errour, thay, not having knawlege and intelligence of the ſamin, nevertheles ſould be diſchargit of all actioun and crime that may be laid to thair charge in that matter, for the cauſe foirſaid, 27 *Novemb.* 1522, Thomas Douglas *and his complices, quha gave in the ſupplicatioun to the Lordis*, 1 *t. c.* 77. C. V. He quha conſentis not to the deliverance or ſervice may not be callit for error.

GIF

C. VI. Perſounis of inqueiſt deceiſt, nor thair airis, may not be callit for errour.

GIF ſum, or the maiſt part, of the perſounis that paſt upon the inqueiſt be deceiſt efter the ſervice, the remanent perſounis that ar on life may be callit and perſewit for errour; bot the airis of thame quha ar deceiſt may not be callit nor perſewit for errour alledgit committit be thair predeceſſouris. 28 *Junij*, —— *The King contra* Ninian Bannatyne, 1 *t. c.* 116.

C. VII. Of the ſchewing of writtis and evidentis to the aſſiſe.

GIF ony perſoun of inqueiſt being callit and perſewit for wilful errour, alledge that thay ſould not be convict thairof, in reſpect that the inſtrument or evidentis producit aganis thame in the ſecund inſtance, was not red to thame the time of the ſervice; zit nevertheles, gif the ſamin was red, and ſchawin in judgment in preſence of the ſaid aſſiſe, the ſaid time of ſervice, the ſamin beand provin be act of court, the ſaidis perſounis, nor nane of thame, can pretend juſt ignorance thairof. 7 *Mart.* 1541, *Ladie* Faſcaſtell *contra Ladie* Blanerne, 2 *t. c.* 71.

C. VIII. The pane of aſſiſouris convict of perjurie or wilful errour.

ITEM, It is ſtatute and ordanit, that gif ony perſoun that hes paſt upon ony aſſiſe or inqueiſt, happinis to be convict as manſworn, and of wilful errour, and the ſamin beand ſufficientlie provin be thair awin grant and confeſſioun maid in judgment, or be a taint or probatioun of twentie five leill men, all and ſindrie thair movabill gudis ſall be confiſcat and applyit to the King's uſe; reſervand alwayis in this cais thair landis and tenementis to thameſelfis, and alſo thair perſounis ſall be put in priſoun, thair to remane for the ſpace of zeir and day at the leiſt. Mairover, fra thyne furth, thay ſall foirfalt and tine thair privilege and benefit of the lawis of this realme, and in all time cuming ſall be haldin as infamous perſounis; the quhilk pane is richtlie ordanit aganis ſic perſounis, to the effect that utheris, takand exemple be thame, may be movit for feir of the like puniſhment not to break thair aith, nor cum aganis the ſamin. *Lib.* 1. *c.* 16.

C. IX. FOR eſchewing of manſweiring of fals aſſiſis and inqueiſtis. *Ja.* III. *fol.* 57. *act.* 59. 8 *Aug.* 1471.

C. X. ANENT fals aſſiſe in criminal cauſis, the panis thairof, and of a great aſſiſe. *Ja.* III. *fol.* 60. *act.* 78. 20 *Novemb.* 1475.

C. XI. Deliverance of ane aſſiſe.

GIF the ane half of the perſounis of inqueiſt, togidder with the Chancellar of the aſſiſe, deliver and pronunce, aggreand in ane voice, the ſamin deliverance is ſufficient and lauchful of the law, albeit the uther half of the aſſiſe agré not nor conſent thairto; bot gif the perſounis of inqueiſt beis diſcrepant, contrare unto uther and equallie divydit in thair deliverance and determinatioun, except onlie the Chancellar and odd man of the inqueiſt, quha refuſis to give his vote, alledgeand that nane of the ſaidis parties hes juſtlie decernit in the matter, and that he in his conſcience is not perſwadit nor inclynit to ather of thair deliverances; in this cais he may be chargit and compellit be the Lordis letteris to deliver with the ane half of the aſſiſe, or with the uther, notwithſtanding his alledgeance foirſaid. 5 *Mart.* 1554, Donypace *contra L.* Oliphant.

Anent

Anent regalitie.

C. I. Lordis of regalitie may puniſh treſpaſſouris, albeit thay be put under continuatioun befoir the King's Juſtice.

GIF ony man dwelland within regalitie of Biſchop, Abbot, Lord, or ony uther, beis callit befoir the Juſtice-general or his deputis, for ſlauchter, mutilatioun, or ony uther crime, and enteris and is continewit to the thrid day of the air, and findis cautioun to that effect; the Lord of the regalitie quhairin he dwellis may call and perſew him for the ſamin crime, within the juſtice court of his awin regalitie, notwithſtanding that he was callit thairfoir to underly the law befoir the King's juſtice, quhair the cauſe as zit is dependand under ſovertie, as ſaid is, 9 *Maij*, 1542, *The King's Advocate contra the Biſchop of* Glaſgow, 1 *t. c.* 542.

C. II. Of conjunct-fie landis havand privilege of regalitie.

GIF ony Ladie is infeft in conjunct-fie of ony landis or baronie, havand powar of regalitie, ſcho hes na powar to hald juſtice airis be reſſoun of the ſaid regalitie, and thairfoir may not compel hir tenentis of hir conjunct-fie landis to compeir befoir hir Baillie in ony ſic juſtice airis; becauſe the heritabill proprietar of the ſaidis landis hes powar to do the ſamin be virtue of his regalitie. 20 *April.* 1553, *Erle of* Mortoun *contra Ladie* Mortoun, 1 *t. c.* 1159.

C. III. The privilege of him quha hes regalitie.

GIF ony perſoun, ſpiritual or temporal, has privilege of regalitie, he is Judge competent to all ſpuilzies and ejectiounis committit within his regalitie, and may advocate all ſic actiounis fra the Schiref, to be decidit befoir him or his Baillie, 10 *Mart.* 1542, *The Biſchop of* Glaſgow *contra Schiref of* Lanerk, 8 *Maij*, 1543. Becauſe the regalitie is ane fré juriſdictioun erectit be the ſelf, and not ſubject to the Schiref nor ſchirefdom quhair it lyis. *Pen. Feb.* 1562, *Lord* Seytoun *contra Erle of* Monteith, 1 *t. c.* 579.

C. IV.

THAT the regalities being in the King's handis ſall be juſtifeit be the King's Juſtice. *Ja.* II. *fol.* 30. *act.* 26. 19 *Jan.* 1449.

C. V.

THAT all regalities being in the King's handis be annexit to the royaltie: And nane to be grantit in time to cum, without deliverance of parliament. *Ja.* II. *fol.* 35. *act.* 46. 4 *Aug.* 1455.

C. VI.

THAT the fredomis of regalities be keipit, and nane abuſit in prejudice of the King's lawis. *Ja.* II. *fol.* 42. *act.* 80. 6 *Mart.* 1457.

Of the perſewar.

C. I. Quha may perſew in judgment.

THIR perſounis underwritten ſould not of the law be haldin to perſew ony actioun or cauſe in judgment. 1. He that is perjure and manſworn. 2. He that hes renuncit and diſchargit perpetuallie and in all time cuming the actioun and cauſe quhilk he intendis to perſew. 3. He that is excommunicat, and not abſolvit; or he that is excommunicat for divers and ſindrie cauſis, and is alanerlie

abſolvit fra ſum thairof, and not fra thame all; becauſe he that is excommunicat may not perſew nor ſtand in judgment, and na perſoun is haldin of the law to mak anſwer to him, bot gif he pleaſis to do utherwayis, *De except. c.* 3. *Ex lib. Scon. c.* 4. Attour, ane man beand accurſit and excommunicat, and not ordourlie abſolvit thairfra, may not be himſelf, nor his procurator, ſtand in judgment to perſew ony actioun or cauſe; and the defendar is not haldin to anſwer to him, as ſaid is, untill he be abſolvit, and rais and execute new ſummoundis aganis the defendar, 3 *Mart.* 1533. Zit nevertheles, gif ane actioun and cauſe be perſewit be divers perſounis, of the quhilk ſum ar curſit, the reſt may perſew for thair part, 26 *Mart.* 1535, 1 *t. c.* 934. Bot it is to wit, that ane man beand curſit and excommunicat, may call and perſew in judgment for ſuſpenſioun of the King's letteris raiſit aganis him; becauſe in this cais he is underſtuid neceſſarlie to perſew in his awin defence, that he be not denuncit rebel, and put to the horn, 25 *Junij*, 1541, 2 *t. c.* 36.

Ane Abbot or Priour may not perſew without licence and powar of the chaptour gevin and grantit to him in writ. 5. *Item*, Na perſoun may perſew be reſſoun of ony conventioun, pactioun, tranſactioun or obligatioun, contenand ony kind of ſimonie, *De except. c.* 12. 6. *Item*, He that is within the age of twentie ane zeiris, ſould not be heard to perſew without conſent and authoritie of his curatouris. 7. The ſone may not perſew the father, without licence obtenit of the Judge. *De except. c.* 3. *Ex lib. Scon.*

C. II. Ane attaintit theif may perſew civilie.

ANE beand criminallie accuſit and convict for thift, may nevertheles call and perſew for ſpuilzie of gudis and geir pertening to him. 19 *Maij*, 1574, Johne Criſtiſone *contra N.* 2 *t. c.* 360.

C.. III. The perſewar ſould find ane borgh or pledge.

GIF ony man complenis upon ane uther for ony quarrel of wrang and unreſſoun (not in civil cauſe) he ſould find borgh and pledge that he ſall perſew: And gif he may not give the ſamin, or gif he findis the ſamin, and will not perſew, he ſall be in the King's will and mercie: And gif in the ſaid cauſe he perſewis, and tynes his cauſe, he ſall in like maner be in the King's will for his wrangous perſute: And gif in the ſaid cauſe that he cannot find borgh and pledge, he ſwearis ane aith that he ſall perſew, and efter he has maid his aith, gif he will not perſew, his bodie may be put in preſoun, thairin to remane during the King's will, for his treſpas. *Leg. foreſt. c.* 14. *Stat. Alex. c.* 9.

C. IV. The perſewar ſould find ane borgh in the Serjandis handis.

IN all pleyis and contraverſies of wrang and unlauch, quhair ony partie findis him hurt and greivit be ane uther partie, he ſould tak with him ane ſufficient man, and pas to the Serjand of that juriſdictioun, and ſchaw to him that ſic a man, be name, has done to him ſic ane wrang and treſpas aganis the law, and thairfoir he findis ane borgh in his handis to perſew him in the form of law; at the quhilk finding of the borgh, the perſewar ſould ſpecifie and taxt his damnage, ſkaith and harmis to ane certane nombre and quantitie, and tak certane witneſſis thairupon, ſwa as na diſcrepance efterwart ariſe betwix him and the ſaid Serjand thairanent; the quhilk beand done, the Serjand incontinent ſall pas and lauchfullie attache

the

the ſaidis perſounis complenit upon, (*as at mair lenth we ſhall declare eſterwart.*) *Mod. ten. cur. c.* 2.

C. V. Privilegit perſounis ſould not find borgh.

IT is ſtatute and ordanit, that the King's Jugeis and Officiaris ſall heir the complaints of eccleſiaſtical perſounis, widowis, orphanis, and pupillis, *ſummariè, & de plano*, without ony borgh or pledge fund be thame for thair perſute, anent all wrangis done to thame, or thair gudis and geir; and efter thay have heard the ſaidis complaintis, thay ſall tak cognitioun gif the ſamin be juſt and reſſonabill, or not; and gif thay find the complainer to be wrangouſlie hurt or ſkaithit, thay ſould cauſe thame to be lauchfullie ſatisfyit and amendit without delay or langer proces; and attour ſould puniſh, efter the quantitie of the treſpas, all perſounis fund to have done wrang or injurie to the ſaid privilegit and miſerabill perſounis. *Stat. Rob.* III. *c.* 6.

C. VI. The perſewar may pas fra his ſummoundis.

GIF the King's Advocate perſewis perſounis of inqueiſt for error, he may renunce and diſcharge the actioun, albeit the ſummoundis be tabulat and put to continuatioun befoir the time of the renunciatioun. 18 *Feb.* 1551, 1 *t. c.* 1176.

C. VII. Renunciatioun maid be King, prejudgis the partie perſewand for his interes.

ANE actioun beand intentit and perſewit be the King's Grace, and be ane perſoun for his interes, gif the King renuncis, *juri, liti, & cauſæ*, the partie perſewand for his interes ſould thairfoir be excludit fra all perſewing in time cuming. 15 *Junij*, 1551, 1 *t. c.* 1577.

C. VIII. Renunciatioun maid be the King for his part alanerlie, prejudgis not the perſewar for his interes.

IN actiounis of reductioun of decreitis intentit at the King's Advocat's inſtance, and als of ony partie; gif the King renuncis, *juri, liti, & cauſæ*, ſa far as concernis him, nevertheles the partie may perſew the ſamin ſummoundis; becauſe the King's interes in this cais is divers and ſeveral fra the richt of the partie. 1 *Mart.* 1540, 1 *t. c.* 27.

C. IX. Albeit the King diſcharge his interes, the partie is not prejudgit thairby.

REDUCTIOUN of ony decrete, or rolment of court, beand intentit at the inſtance of ony perſoun, and be the King's Grace for his interes, as the commoun uſe and conſuetude is in ſic cauſis; gif his Hienes diſchargis his interes thairintill, the partie nevertheles may perſew conform to his ſummoundis; becauſe the reductioun of decreitis or rolmentis of courtis concernis ſpeciallie the perſoun and actioun of the partie. 25 *Feb.* 1541, *The King, and Sir* William Heriot *contra the Schiref of* Fife, 1 *t. c.* 519.

C. X. Renunciatioun maid be the King's donatar prejudgis not the King.

ANE ſummoundis tuiching the non-entres of landis beand intentit at the King's inſtance, and his donatar, gif the donatar renuncis his richt, and paſſis thairfra, the King nevertheles may perſew conform to the ſummoundis, and the partie defendar ſall be compellit to anſwer at his inſtance, notwithſtanding the renunciatioun maid be his donatar. 26 *Mart.* 1541, *The King and* Kincragie *contra the Laird of* Lundie, 1 *t. c.* 522.

C. XI. When the perſewar may have his ſummoundis, or

THE perſewar may correct, mend, or *habere pro deleto*, ony part of his libel, quhilk is not ſubſtantial, until litiſconteſtatioun be

ony part thairof, *pro delito.*

be maid, or the libel be expreſſlie acceptit be the defendar; and efter litiſconteſtatioun, or expres acceptatioun be word, he on na wayis may do the ſamin. 11 *Feb.* 1548. 9 *Feb.* 1541, William Rutherfurd *contra Erle* Bothwel. 1 *Feb.* 1548, *The Quenis Advocat contra* Charterhous, 2 *t. c.* 187.

C. XII. Quhen the perſewar may pas fra, or continue his libel.

THE perſewar may not pas fra the perſute of his libel, nor zit continue the ſamin, gif the Juge hes gevin ony interloquitour thairintill, except he do the ſamin with the defendar's conſent. 21 *Mart.* 1540, 2 *t. c.* 32.

C. XIII. Of ane perſewar beand ſtranger.

GIF ony ſtranger cumis in the country to perſew ony ſubject thairof, for ony cauſe, and intentis it aganis him, in the quhilk the ſaid ſubject defendar makis ony alledgeance quhilk mon be provin in ane uther realme; the Lordis of counſal aucht and ſould direct thair commiſſioun to the ordinar Jugeis of that realme within the boundis quhair beſt knawledge may appeirandlie be had of the ſaid alledgeance, at the opinioun of the ſaid defendar: And the partie perſewar being warnit *apud acta*, to compeir at certane day and place, conform to the ſaid commiſſioun, befoir the Jugeis contenit thairintill, to heir and ſé probatioun led and deducit upon the ſaid alledgeance befoir thame; provyding alwayis that payment of his expenſis be maid be him, or his procurator remaning in this realme during the time of the reporting of the ſaid probatioun, to be paid to him, in cais he failzie in proving thairof: And be the contrare, gif he happinis to preive the ſaid alledgeance, the ſaid ſtranger perſewar ſall be haldin to pay to him, at the end of the pley, all the expenſis maid be him in leiding and deducing the ſaid probatioun, togidder with the remanent expenſis maid in defence of the ſaid cauſe, gif it happinis the ſentence and decrete of the principal cauſe to be pronuncit aganis the ſtranger. 18 *Feb.* 1532, *Merchandis of* Avinzeon *contra airis of* Faſtcaſtell, 1 *t. c.* 661.

C. XIV. The privilege of a perſewar beand ſtranger.

ANE ſtranger perſewand ony actioun or cauſe, has privilege to be callit be the ordour of tabill, and his actioun ſould be heard ſummarlie upon a ſimpill ſupplicatioun, without the rigorous obſervatioun of the form and ordour of uther proces: And gif ony thing be objectit aganis ony procuratorie producit be him, ſwa that it be doubtſum gif the ſamin be ſeillit with the proper ſeill of the gevar, or ſubſcrivit be him, or ony autentique Notar in his name, the ſamin notwithſtanding ſould be admittit, the producar thairof finding cautioun *de rato*. 5 *Feb.* 1533, *Merchandis of* Avinzeon *contra airis of* Faſtcaſtell. 2 *Mart.* 1534, William Wodhous Ingliſhman *contra* William Fogo, 1 *t. c.* 995.

C. XV. A titill ſupervenient efter the intenting of the ſummoundis, is not ſufficient for perſewing thairof.

GIF ony man intentis ſummoundis aganis ane uther, to compeir at ane certane day, and at the day of the intenting of the ſamin, had not ane ſufficient titill, quhairby he micht have perſewit the ſaidis ſummoundis at the day of compeirance contenit thairin, and nevertheles, efter the time of the intenting of the ſummoundis, and befoir the calling thairof, happinis to obtene ane ſufficient titill, daitit efter the time of the intenting of the ſaid ſummoundis; he on na wayis may perſew the ſaid ſummoundis, bot aucht and ſould libel

libel of new agane, gif he pleaſis, 19 *Decemb.* 1541, Geiles Guthrie *contra* David Gairdie, 1 *t. c.* 661. And ſiclike, gif the perſewar, as executour to his predeceſſour, execute ony ſummoundis aganis ony perſoun, and, efter the time of the executioun, impetrat the office of executorie, he ſould not be admittit to perſew the ſaid ſummoundis, bot aucht and ſould libel of new agane; becauſe he had not at the time of the executioun the richt and titill upon the quhilk his ſummoundis is foundit; and he may not be helpit be ony richt or titill ſupervenient, or impetrat be him induring the dependance of the pley. 27 *Maij*, 1541, *The Laird of* Balcleuch *contra Schiref of* Teviotdale, 2 *t. c.* 33.

C. XVI. The perſewar ſould inſtantlie produce his titill for verificatioun of his clame.

THE perſewar foundand him in his clame and libel upon a titill quhilk conſiſtis in writ, ſould produce the ſamin, beand requirit thairto be the partie defendar, at the day of compeirance, and ſould compeir *cum facco parato*, for verificatioun of his libel and clame: And gif he dois not the ſamin at that time, the defendar ſould be aſſoilzeit fra that ſummoundis, and ſould not be compellit to anſwer thairefter until his expenſis be paid to him, 22 *Novemb.* 1561, Robert Leſlie *contra Schiref of* Cromartie. *Ult. Julij*, 1563, *The Ladie* Lovat, *and hir tenentis*; except the ſummoundis be foundit upon a titill, quhilk conſiſtis *in facto alieno, vel in facto valde antiquo*; as gif ony man perſewis as air to his grandſchir, he may have ane reſſonabill delay to verifie his clame, and to produce his titill to that effect, and ſould not be compellit to produce the ſamin inſtantlie; becauſe ane man cannot have readie inſtantlie ſa mony or ſa auld evidentis, 28 *Junij*, 1542, *The Laird of* Colingtoun *contra the Laird of* Dundas, 1 *t. c.* 1264.

Item, The perſewar *in cauſa ſpolii, vel in cauſa turbatæ poſſeſſionis*, foundand him in his libel, upon ane aſſedatioun, or uther titill, ſould, at the deſire of the defendar, exhibite and produce the ſamin in the beginning of the cauſe: Bot he may not be compellit to enter in queſtioun or diſputatioun upon the validitie, ſtrenth, or richt thairof, until the ſamin titill be producit efterwart be him be way of probatioun, 7 *Mart.* 1543, Nichol Dundas *contra* Helene Hagie, 2 *t. c.* 159.

Item, The perſewar is not haldin to produce his titill for inſtructioun of his ſummoundis, gif the ſamin be notourlie knawin to the Judge, 16 *Jan.* 1546, George Douglas *contra Erle of* Mortoun, 1 *t. c.* 612. As gif it be producit, and alreddie lyand in proces befoir the ſamin Judge in the ſamin proces: Bot gif it be of befoir producit be the perſewar in ane uther proces befoir the ſamin Judge, nevertheles the perſewar, at the inſtance and deſire of the partie defendar, aucht and ſould exhibite and produce the ſamin. 28 *Jan.* 1534, *Biſchop of* Sanctandrois *contra Erle of* Buchane, 2 *t. c.* 645.

C. XVII. The perſewar may pas fra ony perſoun perſewit be him.

IN all actiounis of ſpuilzie, ejectioun, or uther cauſis, quhair divers and ſindrie perſounis ar perſewit, and compeiris, the perſewar may at the bar, at ony time befoir litiſconteſtatioun, tak him to ony ane of the ſaidis perſounis, and pas fra the reſt; the quhilk gif he dois, he prejudgis himſelf anent all actioun, quhilk he micht have had in ony time cuming for the cauſe foirſaid aganis ony ane of

thame fra quhom he paſſis, 3 *Mart.* 1532. Bot gif the actioun be intentit aganis thame conjunctlie, the perſewar may not pas fra ony of thame, and intent his actioun aganis ony atheris of thame ſeverallie. 7 *Mart.* 1535, 1 *t. c.* 918.

C. XVIII. Of divers perſewaris *conjunctim*, of the quhilk the ane may not perſew without the reſt.

ANE ſummoundis beand intentit be twa perſounis conjunctlie, gif the ſamin be found irrelevant be reſſoun of ane of the perſewaris, or becauſe he hes renuncit *juri & liti*, the uther perſoun perſewar may not perſew conform to that libel, bot aucht and ſould libel of new agane. *Ult. Mart.* 1530, James Stewart *contra the Laird of* Findlater, 1 *t. c.* 300.

C. XIX. *Nemo aſpernabitur idem jus ſibi dici, quod ipſe aliis dixit, vel dici effecit.*

Twa ſummoundis beand perſewit be the ordinance of the Judge, betwix twa parties, to proceid *pari paſſu*, ilk ane aganis uther; gif ony of the ſaidis parties purcheſis the King's writing, and obtene diſcharge of the ſummoundis perſewit aganis him, he ſould in like maner deſiſt and ceis fra perſewing of his awin ſummoundis aganis the uther partie. 30 *Julij*, 1532, 1 *t. c.* 550.

Of the defendar.

C. I. Of the defendar beand curſit.

ANE beand curſit and excommunicat, may, notwithſtanding the proces of curſing and excommunicatioun led and deducit aganis him, defend in judgment in ony actioun or cauſe, 22 *Mart.* 1548, *Maiſter of* Craufurd *contra Erle of* Craufurd, 2 *t. c.* 206. He that is curſit and excommunicat, may not defend in judgment in ony actioun or cauſe; for the exceptioun of excommunicatioun may be proponit at all times, befoir or efter litiſconteſtatioun, aganis the Judge, the perſewar, or defendar, *De except. c.* 3. *Ex lib. Scon.* 2. Gif he that is defendar was ſpuilzeit be him that is perſewar, he may not be compellit to defend or anſwer unto the time he be firſt reſtorit, *De except. c.* 13. 3. Gif ony man be perſewit be ane uther, for ſindrie clamis, crimes or cauſis, befoir ſindrie Jugeis, he may not be compellit to anſwer to ma cauſis nor ane, on ane day; bot gif thair be ſindrie perſewaris, he ſall anſwer to ſindrie clamis, *Quon. attach. c.* 49. *De except. c.* 12. *Leg. burg. c.* 81. *Aſſiſ. Reg. Dav. c.* 6. *Stat. Will. R. c.* 8.

C. II. Of the defendar beand rebell.

GIF ony perſoun havand ane lauchful wife be callit and perſewit in ony actioun or cauſe, as for reductioun of his infeftmentis, he hes na perſoun to defend or ſtand in judgment be himſelf, or his procuratouris, gif he be denuncit our ſoverane Lordis rebel, and put to his horne, and not relaxt thairfra; and mairover his wife, albeit ſcho have ſpecial interes in the cauſe, as gif ſcho be conjunct-fear of the ſaidis landis, nather be hirſelf, nor be hir procuratour, ſould be admittit to defend in the mater; becauſe ſcho havand ane husband, zit naturallie livand, may not ſtand in judgment, except ſcho be authorizit be him, quhilk he cannot do be reſſoun of the ſaid horning. 11 *Feb.* 1563, James Johnſtoun *contra Laird of* Johnſtoun. 29 *Julij*, 1566, Marion Montgomerie *contra* Ninian Sempill, 1 *t. c.* 818.

C. III. How the defendar ſould mak anſwer.

THE defendar, nor his prolocutour, may not be compellit to mak

mak anſwer befoir the perſewar or his prolocutor have proponit and ſaid all that he will clame, to the effect that he be not improviſitle or ſuddenlie oppreſt and overcum be the perſewaris petitioun. *Item*, In the breve of richt, in actiounis of propertie and heritage, the defendar nor his prolocutour may not be compellit to propone his reſſounis tuiching his richt and titill at the firſt reding of the breive, nor zit to ſay or ſchaw ony reſſoun als lang as the perſewar has ony thing as zit to clame or ſay aganis him. *Item*, The defendar, nor his foirſpeikar, may not be amerciat be the Judge, or challengit, as undefendant, ſa lang as he defendis and ſchawis that he has done na injurie, wrang nor unreſſoun in the actioun and cauſe quhairin he is perſewit. And ſiclike, in the breve of mortanceſtrie, and in the breve *de nova diſſaſina*, in actiounis of ſpuilzie and ejectioun, he nor his foirſpeikar may not be conſtranit to ſchaw for his defence, that he dois not ony injurie, or that he wrangouſlie with-haldis not that quhilk is clamit fra him, or that he committit not ony violent or wrangous ſpoliatioun; nor zit to propone ony reſſoun or uther thing, until the breve be firſt all and haill red; for befoir he mak ony anſwer, he ſould heir the ſaidis breves; and efter he has heard and underſtuid the ſamin, he ſould anſwer and mak defence in the beſt maner he may, als weill aganis the King's breve [*ſummoundis*] as aganis the perſewaris clame; and thairefter, with licence obtenit fra the Judge, he may pas furth of the court, to ask counſal of his beſt avyſit freindis thair preſent; and efter he has avyſit with thame, ſould return in court, and ſchew ane reſſonabill cauſe quhy he dois na injurie, wrang, violence nor unlauch, *Lib.* 1. *c.* 13. *Stat.* 2. *Ro. Bruce*, *c.* 19. And efter he hes heard the perſewaris narratioun and clame, it is in his awin optioun and will to let the ſamin pas to the knawlege of ane inqueiſt, or to call his warrand thairanent, gif he has ony reſſonabill cauſe quhairfoir he may call the ſamin. *De jud.* *c.* 86.

C. IV. Of ane actioun and cauſe that ſleipis.

GIF ony perſoun intentis and executis ſummoundis aganis ane uther, in ony actioun or cauſe, and ſufferis the ſamin to ſleip, and thairefter for the ſamin cauſe raiſis ane new ſummoundis aganis the ſamin perſoun, he is not bund and oblift to anſwer thairto, untill the firſt ſummoundis be firſt decidit; becauſe he may uſe in this cais the exceptiounis and defence of *lite dependente*. 13 *Julij*, 1550, 1 *t.* *c.* 1116.

C. V. Divers defendaris, quhairof the ane may not be compellit to anſwer without the reſt.

GIF ane ſummoundis be intentit aganis divers and ſindrie perſounis conjunctlie, and ane of the defendaris decline the Judge, or be utherwayis aſſoilzeit *ab illa inſtantia judicii*, the Judge may not procede be reſſoun of that ſummoundis aganis the remanent defendaris. 1 *Maij*, 1543, Iſobell Hopper *contra Biſchop of* Dunkeld, 2 *t.* *c.* 140.

C. VI. Defendar may not be compellit to anſwer the firſt day.

THE defendar may not be compellit contrare his will, to anſwer befoir the Lordis of ſeſſioun the firſt day of compeirance. 8 *Junij*, 1543, George Douglas *contra* Olivar Sincler, 2 *t.* *c.* 142.

C VII. The defendar may not be

GIF the defendar clyde and evacuat the ſummoundis and actioun perſewit aganis him, and produce ane inſtrument, writ, or evident, in

compellit to give the perſewar copies of writtis producit be him.

in judgment, quhairof the perſewar deſyris the copie to be gevin him, that he may mak thairby anſwer thairto; the defendar ſould not be compellit to give him the copie thairof, bot onlie the date of the ſamin, togidder with the inſpectioun and reiding thairof. 12 *Feb.* 1540, *The Laird of* Kellie *contra* James Hering, 1 *t. c.* 639.

C. VIII. Of the defendar being in captivitie in the King's ward.

GIF ony perſoun be in the King's ward or captivitie, all actiouns is intentit aganis him, or contrare ony uther perſoun, quhilk may be prejudicial to his heritage, aucht and ſould ceis, unto the time he be fred and relaivit of the ſaid ward, and may compeir to mak his defence, as principal partie, or zit for his interes. 24 *April.* 1505, Jonet Kennedie *contra Schiref of* Lanerk, 1 *t. c.* 221.

C. IX. Of the defendar being in captivitie in the handis of enemies.

GIF ony of our ſoverane Lordis liegis be takin be his enemies, and haldin be thame in captivitie or priſoner, he may not be callit and perſewit induring the time of the captivitie and ſubjection, for ony actioun of ſpuilzie, ejectioun, thift, reif, ſlauchter, murther, or uther cauſe, civil or criminal, done or committit be thame, or ony of thame, until he be releivit and reſtorit to libertie. *Ult. Julij*, 1546, Johne Home *of* Blackader *contra* Niniane Chirnſide, 1 *t. c.* 633.

C. X. In the King's cauſe it is ſufficient to warn his Advocate.

IN ony actioun or cauſe quhair the King's Grace has ſpecial interes, gif his Advocat be lauchfullie warnit to compeir and defend, it is not neceſſar to warn his Hienes Comptrollar. 1 *Junij*, —— 1 *t. c.* 1009.

C. XI. Of the perſewar takand up his ſummoundis.

QTHEN ony perſoun intentis ane actioun or cauſe aganis ane uther, and the defendar compeirand perſonallie, he takis up his ſummoundis, and will not perſew the ſamin as is libellit, the defendar may not be compellit thairefter to anſwer at his inſtance, untill he be of new ſummoundit, and his expenſis paid to him. 7 *Julij*, 1532.

C. XII. Of the perſewar repellit *ab agendo*.

ITEM. Quhen ony perſoun intentis ane actioun as perſewar, and is repellit *ab agendo*, becauſe he has not perſoun to ſtand and perſew in judgment, the defendar ſall not be haldin to anſwer agane at his inſtance, unto the time he be of new warnit, and his expenſis paid to him. 7 *Julij*, 1532.

C. XIII. The defendar may deſire proteſtatioun to be admittit.

ITEM, Gif ony perſoun intentis a ſummoundis aganis ane uther, and compeiris not at the day thairof to perſew the ſamin, the defendar compeirand, and the ſaid day of compeirance beand bypaſt, proteſtatioun ſould be admittit be the Judge, at the inſtance of the defendar, that he ſall not be compellit to anſwer in the matter, quhill he be of new ſummonndit, and his expenſis paid. 29 *Jan.* 1532, Robert Skene *contra Abbot of* Deir. The quhilk proteſtatioun aucht and ſould be admittit the ſecund day; at the fardeſt gif twa dayis efter the day of compeirance be compleitlie and *excluſivè* bypaſt. 29 *Jan.* 1532, *Burgh of* North-Berwick *contra Prioreſs thairof*, 1 *t. c.* 531. *Item*, Gif ony actioun be intentit at the King's inſtance, the defendar aucht not to obtene ony proteſtatioun aganis him,

him, albeit he perſewit not in time, nor maid na inſtance; becauſe na proteſtatioun ſould be admittit in the King's actiounis. 16 *Dec.* 1528, *The King* contra John Grahme, 1 *t. c.* 313.

C. XIV. The defendar ſould not ſhaw his titill or evidentis to the perſewar.

THE defendar ſould not be compellit to exhibite, ſhaw and produce in judgment his infeftmentis, evidentis, or uther writis, to the perſewar, *ad fundandam ipſius actionem, vel intentionem*, 12 *Feb.* 1540, 1 *t. c.* 1055. *Item*, The defendar fundand his exceptioun upon ony titill, evident or writ, ſould not be compellit to exhibite and produce the ſamin to the perſewar the time of the proponing of the exceptioun; bot it is ſufficient gif he do the ſamin at the term aſſignit to him for preiving of his exceptioun, 4 *Mart.* 1543, *Abbot of* New-bottle *contra* Hew Douglas, 2 *t. c.* 160. Becauſe utherwayis the perſewar havand ſene and conſiderit the defendaris titill and richt, micht invent and reply aganis him; and thairfoir the Lordis of ſeſſioun, and uther Jugeis, uſis in ſic caiſis to reſerve to the perſewar all his juſt and lauchful defenſis *contra producenda in termino probationis*. 3 *Feb.* 1541, 2 *t. c.* 49.

C. XV. Of divers defendaris, quhairof ane is privilegit.

DIVERS and ſindrie perſounis beand perſewit *conjunctim*, quhairof ane hes privilege gevin and grantit to him, that na proces ſall be led aganis him during ane certane ſpace, or during the time of his abſence, the ſamin privilege ſould be extendit to the remanent of his colligues. 5 *Mart.* 1533, 1 *t. c.* 961.

C. XVI. Of divers defendaris, quhairof the ane is principal, the uther for his interes.

GIF ony man perſewis twa perſounis, the ane as principal, and the uther for his interes, albeit he that is perſewit for his interes deceis in the mean time, the perſewar ſall have proces and executioun aganis the partie perſewit as principal, ſpeciallie gif thair be nathing contenit in the ſummoundis or clame to be done, or reſtorit, be him that is deceiſt. 9 *Julij*, 1434, 1 *t. c.* 986.

C. XVII. Of divers defendaris, quhairof ſum ar weil and ſum ar evil ſummoundit.

ITEM, Divers and ſindrie perſounis beand ſummoundit conjunctlie, albeit ſum or ane of thame be not lauchfullie ſummoundit, nevertheles the remanent aucht and ſould anſwer to the ſamin ſummoundis. 19 *Octob.* 1554, *The Quene* contra Alexander Guthrie *and utheris*, 1 *t. c.* 737.

C. XVIII. The complices may not be compellit to defend without the principal.

DIVERS and ſindrie perſounis being callit and perſewit in judgment, of the quhilk ſum ar principal, and utheris ar colligues or acceſſouris, gif he that is principal be in the King's ward and captivitie, the remanent perſounis ar not haldin to anſwer in that cauſe, quhill he or thay that ar principal be at fredome, and put to libertie. *Ult. Maij*, 1569, Alexander Ogilvie *contra* James Stewart, 2 *t. c.* 2.

Anent Procuratouris.

C I. Quhat cauſis may be pleidit be ane Procuratour.

IT is leaſum to all men in all actiounis of heritage, propertie, or uther civil cauſis, to perſew or defend be himſelf, or be his procuratour, as he pleaſis, maid and conſtitute be him to win or tine

the cauſe, *Lib.* 3. *c.* 13. Bot in criminal cauſis perſewit criminallie, na Procuratour may be maid nor conſtitute ſpeciallie be the perſewar. *De except. c.* 4. *Ex lib. Sconen.*

C. II. Quha may conſtitute a Procuratour.

IT is requirit that he quha makis and conſtitutis ane Procuratour for him, be preſent in the King's court, quhen he dois the ſamin befoir the King's Juſtice, or utheris Jugeis ſittand in judgment: Bot it is not neceſſare, that he quha is conſtitute Procuratour, or the partie aganis quhom the Procuratour is conſtitute, be preſent at the time of the conſtitutioun; for ane man that is abſent may be maid and conſtitute Procuratour aganis ane uther man quha is in like maner abſent. *Lib.* 3. *c.* 13.

C. III. Quha may not conſtitute a Procuratour.

THE perſounis underwritten may not conſtitute Procuratouris, *viz.* Ane pupil, or minor, without conſent of his tutoris or curators; he that is dumb; he that is deif; he that is ane fule, without diſcretioun or judgment; he that is challengit and accuſit of felonie, or leſe-majeſtie, or is excommunicat and expellit furth of the companie and ſocietie of godlie men. *De actorn. c.* 1. *De maritag. c.* 8. *De except. c.* 4. *Ex lib. Sconen.*

C. IV. Quha may be conſtitute a Procuratour, and quha not.

IT is leaſum to ilk man to mak ane Procuratour alanerlie, or twa or ma Procuratouris togidder, as he pleiſis, to the effect that gif it happinis ane of thame to be abſent, the uther, or the reſt of thame, may be preſent; the quhilk thay may do of the law, gif thay be maid conjunctlie and ſeverallie, *Lib.* 3. *c.* 13. Bot gif thay be conſtitute togidder *in ſolidum*, nane of thame without the uther may defend or perſew as Procuratouris in judgment, *De except. c.* 4. *Ex lib. Sconen.* *Item*, A ſtranger or fremmit man in blude may be Procuratour for ane uther, and the husband for the wife: And ſiclike the father may be Procuratour for the ſone, and the ſone for the father, *Lib.* 3. *c.* 14. not onlie to defend bot alſo to perſew, he findand cautioun *de rato*, gif he beis requirit be the partie, 23 *Julij*, 1553, *Young Laird of* Eiſt-Nisbit *contra L.* Inverleith, 2 *t. c.* 237. *Item*, Near kinniſmen and freindis beand conjunct perſounis to the partie, (to wit, within feird degreis of affinitie or conſanguinitie *excluſivè* to thame) may, in abſence of the partie thair freind compeir in judgment as foirſpeikaris for him, albeit thay have not ane ſufficient mandat to that effect, and in his name defend in ony actioun or cauſe perſewit aganis him quhairby he may be damnifyit, provyding that the ſaid foirſpeikar find ſufficient cautioun *de rato*, beand requirit thairto, 19 *Julij*, 1524, 1 *t. c.* 635. *Item*, Thir perſounis under-written may not be Procuratouris, *viz.* He that is infame of the law, or be reſſoun of ony filthie deid; he that is dum, deif, or at all times furious; he that is within the age of twentie five zeiris; or ane eccleſiaſtical perſoun, quha may not be ane Procuratour befoir a temporal Judge in ony actioun, and ſpeciallie in criminal cauſis and actiounis of blude; and ſiclike, he may not be ane Procuratour befoir ane eccleſiaſtical Judge, nor ſpeik in ony actioun or cauſe, except for himſelf, his awin kirk, or for miſerabill and convict perſounis. *Item*, Na man may be a Procuratour, quha is excommunicat, or a commoun tulzeour or fechter, ane Notar-publict, nor ane that cannot write or reid. *Item*, Ane woman is forbid-

biddin of the law to be ane Procuratour, *De except. c.* 4. *Ex lib. Scon. Item*, Na man may be Procuratour in ony actioun or cauſe, bot he quha has ane ſpecial mandat be writ and ſeill, contenand ſufficient powar gevin and grantit to him to win or tyne the cauſe, *Lib.* 3. *c.* 13. *Item*, Na man may be Procuratour, except the clauſe of ratihabitioun be contenit expreſlie in his mandat; and albeit he have ane general procuratorie, without the ſaid clauſe, he may be repellit, except he will give and find *cautionem de rato. Item*, ane Procuratour conſtitute be ane Biſchop, Abbot, or ony uther Prelat of the kirk, without conſent of the chaptour or convent, may be repellit. *Item*, Gif ony crime be objectit criminallie to ony man, he may not be ane Procuratour untill he have purgit himſelf thairof, or ellis quhill zeir and day be bypaſt efter the objecting of the ſaid crime, *De except. c.* 4. *Ex lib. Scon. Item*, It is ſtatute, that na Serjand within burgh or baronie be proloquutor or Actornay for ony man in court, or in judgment, quhair he is Serjand, nor ſtand in judgment, nor be witneſs, nor uther probatioun or acquittance, ſa lang as he is Serjand, except it be in his awin proper cauſe, or of his Lord and maſter. *Stat. Reg. David. c.* 35. *Stat.* 1. *Ro. Br. c.* 18. *De jud. c.* 46.

Ja. I. *fol.* 8. *act.* 49. 12 *Mart.* 1424. *in fine.*

C. V. Procuratouris ſould be gevin to puir folk.

ITEM, The Lordis of ſeſſioun ſall cheiſe zeirlie ane ſufficient man to be Advocat for the puir in thair actiounis and cauſis, to quhom the Theſaurar ſall pay zeirlie for his fie ten pundis, the quhilk ſall be allowit to him zeirlie in the chekkar; and the ſaid Advocat ſall ſweir that he ſall tak na profit fra thame for his procuratioun. 2 *Mart.* 1534. 27 *April.* 1535, 1 *t. c.* 467.

C. VI. The partie may not be compellit to anſwer without a Procuratour.

GIF ony partie beand perſewit dois diligence befoir ane Judge to get a Procuratour for himſelf, and cannot obtene the ſamin, he ſould not be compellit to anſwer to the ſummoundis, quhill the Judge provide him an Advocat upon his expenſis. 19 *Jan.* 1530, *The King* contra Andro Baron, 1 *t. c.* 327.

C. VII. Of ane Procuratour beand ſeik.

GIF ane delay be gevin to ony partie, be reſſoun that his Advocat is lyand ſeik, he ſall at the nixt term affixt to him anſwer, and have na farder delay, becauſe he may provide for ane uther Procuratour in the mean time. 3 *Julij*, 1535, 1 *t. c.* 1012.

C. VIII. A Procuratour refuſand to procure, may be deprivit.

ONY Advocat or Procuratour admittit be the Lordis, beand chargit and commandit be thame to procure for ony perſoun upon his expenſis, may be diſchargit of his office of procuratioun in all time cuming, gif he diſobey and refuſe the ſamin. 14 *Mart.* 1529, 1 *t. c.* 298,

C. IX. Of a procuratorie producit for ane ſtranger.

ANE ſtranger produceand ane mandat, or ony Procuratour compeirand for him with ane mandat, gif ony exceptioun be proponit aganis the validitie of the mandat, or that the ſamin is fals and feinzeit, he ſall have proceſs, notwithſtanding the ſaid alledgeance; always decrete beand obtenit in his favour, he ſall find cautiouu *de rato*, or he get ony executioun thairof. 14 *Feb.* 1532, 1 *t. c.* 603.

GIF

C. X. Procuratourſie may be leaſumlie askit be the Procuratour.

GIF ony perſonn promiſis to his Procuratour or Advocat, to ſatisfie and content him for his labouris in his actioun and cauſe, and the Procuratour dois diligence, and obtenis victorie in the cauſe, he has juſt actioun and titill for his reward and fie; the quhilk gif the partie refuſis to pay, the Judge may taxt and modifie the ſamin, 14 *Maij*, 154ſſ, *M.* Ja. Ireland *contra* Helene Rutherfurd, 1 *t. c.* 544. *Item*, Ane Advocat or Procuratour has gude actioun and titill to call and perſew for all ſowmes of money, or uther gude deid promiſit to him be ony perſoun, in name of penſioun, for counſal and advocatioun in his actiounis and cauſis, quhen he ſall be requirit thairto. *Pen. Jan.* 1532, *M.* Henrie Scrymgeour *contra* Johne Cuming of Culter, 1 *t. c.* 525.

C. XI. The powar of ane Procuratour.

EFTER that ane Procuratour is lauchfullie conſtitute, and ſufficient powar grantit unto him, fra thyne furth, he may do for his client, althocht he be abſent, all quhilk he micht to do, gif he war preſent in proper perſoun, *Lib.* 3. *c.* 13. *Ex Purves. Item*, The actioun or pley quhairin the Procuratour is conſtitute, may be finallie endit be the Procuratour in judgment, or in freindlie maner and concord, als ſurelie, and with als great effect, as gif the ſamin had bene endit be the partie quha maid and conſtitute the ſaid Procuratour, *Lib.* 3. *c.* 14. *Item*, Ane Procuratour havand ane general mandat, may not tranſact or compromit in the cauſe, bot gif he have ane ſpecial mandat to that effect. *Item*, He may not reſſave payment of ony debt auchtand to his client, without ane ſpecial mandat, bot gif he be conſtitute with powar of general adminiſtratioun of all gudis and geir pertening to his client. *Item*, He may not freith and quite ane debtour of his debt, without he have ſpecial procuratorie thairto, *De except. c.*4. *Ex lib. Scon. Item*, Ane Procuratour may not ſubſtitute ane utherProcuratour for the conſtituent nor for himſelf, *De jud. c.* 107. For ane Procuratour beand conſtitute for ane Procuratour, may be repellit, bot gif the ſubſtitutioun was maid be him quha had ane mandat with powar to ſubſtitute him; for all thingis ar underſtuid to be forbiddin to ane Procuratour, quhilk ar not expreſlie grantit to him, *Lib.* 3. *c.* 15. Or except the ſamin conſtitutioun was maid efter litiſconteſtatioun be him quha had ane Procuratour for the hail caus, and unto the end thairof. *Item*, Ane Procuratour conſtitute in ane certane cauſe, ſould not be heard in uther cauſis as Procuratour; becauſe it is not leaſum to him to excede the boundis of his powar and mandat. *De except. c.* 4. *Ex lib. Scon.*

C. XII. The conſtituent is obliſt to the deid of his Procuratour.

HE quha has maid and conſtitute ane Procuratour, may be compellit and diſtreinzeit to fulfill and obey that quhilk is done be his ſaid Procuratour in the cauſe, ather be ſentence of the Judge, or be freindlie concord: And gif he has not of his awin ſufficient gudis quhairin he may be diſtreinzeit, his Procuratour on na wayis may be diſtreinzeit for ony thing done be him as Procuratour, althocht he be diſtreinzeable in gudis and geir thairfoir, *Lib* 3. *c.* 14. *Item*, Quhen the husband of ony woman is conſtitute be hir as Procuratour for hir in ony actioun or pley, tuiching hir tochergude or dowrie, and happinis to tyne ony thing of richt, be dome of court, or be final agrement, the wife may not move ony pley efter-

efterwart thairanent, bot is bund to hald the ſamin firm and ſtable, efter hir husbandis deceis, and may not cum aganis that quhilk he did as Procuratour for hir; becauſe that quhilk wes done in the King's court in maner foirſaid, ſould in all time thairefter be haldin firm and ſtable, and may never be agane callit.

C. XIII. Ane Procuratour may be revokit.

QUHEN ane man makis and conſtitutis ane Procuratour in ony actioun or cauſe, the quhilk Procuratour anſweris in the ſamin cauſe, and dois that quhilk pertenis to the office of ane Procuratour, it is leaſum to him to revoke and agane call the ſaid Procuratour, in ony part of the cauſe or pley, and put and ſubſtitute ane uther in his place, ſpeciallie gif ony deidlie feid or inimitie has intervenit betwix thame; for he that makis and conſtitutis ane Procuratour for him in judgment, is underſtuid to do the ſamin, in cais he may not be preſent himſelf; and thairfoir quhen he is preſent, he may do thairanent as he pleiſis. *Lib.* 3. *c.* 13.

C. XIV. Quhat time a procuratorie expyris.

ITEM, Ane procuratorie or mandat is of nane avail, gif the conſtituent happinis to deceis, *re integrâ*; for in this cais the mandat and powar expyris and endis be deceis of the maker thairof. *De except. c.* 4. *Ex lib. Scon.* 15 *Feb.* 1532, *Merchandis of* Avinzeon *contra airis of* Eaſtcaſtel, 1 *t. c.* 526.

Anent attachiamentis.

C. I. Quhat ane attachiament is.

BECAUSE attachiamentis ar the begining and origin of pleyis, and proces of wrangis and unlauch that is perſewit be ſicker and ſure borghis, [*as ſaid is of befoir, in the titill of the perſewar*] thairfoir we will firſt declair, quhat is ane attachiament, be quhom it may be maid, and in quhat maner. Attachiament is ane lauchful kind of band, quhairby the defendar is compellit aganis his will to compeir in judgment, and mak anſwer as accordis of the law, be the partie complenand upon him. *Quon. attach. c.* 1. *in prin.*

C. II. In quhat cauſis, and in quhat maner attachiamentis ſould be maid.

ATTACHIAMENT may be maid ſindrie maner of wayis; for ſumtimes it is maid upon the gudis and geir of the defendar, *viz.* in actiounis and pleyis of debt, and of movabill gudis: becauſe the gudis and geir of the defendar in ſic caiſis ſould be put and continuallie haldin under arreiſt and fence, until he find ſicker borgh to compeir and anſwer in judgment to the partie complenar, as law will; the quhilk ſecuritie being found, the arreiſt ſould be relaxt and louſit. Sumtimes attachiament is maid on ane man's bodie, *viz.* in criminal actiounis and cauſis, as quhen ane dingis and hurtis ane uther; for in ſic caiſis the treſpaſſour ſould be firſt attachit and arreiſtit in his bodie, and not firſt in his gudis, except he will not ſuffer attachiament in his bodie, in the quhilk cais his gudis may be arreiſtit in maner foirſaid, *Quon. attach. c.* 1. *in principio.* *Item*, In all cauſis, als weill criminal as civil, gif the defendar be ſic ane man quha hideth and with-haldeth him maliciouſlie and fraudfullie furth of that juriſdictioun, that the Serjand may not mak ane attachiament upon him, thairby delayand and defraudand his partie adverſare.

ſra reſſoun of law; then the Serjand ſould pas with witneſſis to his houſe, and mak ane arreiſt, and fence his gudis and geir, gif he ony hes within his juriſdictioun, and cauſe the ſamin be haldin faſt and unlouſit, until the awner of the ſaidis gudis cum and thole lauchful attachiament, and bind him with ſufficient borgh to anſwer to his partie at ane certane lauchful day, as law will; the quhilk beand done, the foirſaid arreiſtment maid upon his gudis ſould be frelie louſit. *Mod. ten. cur. c.* 2.

C. III. Be quhom attachiament ſould be maid.

ATTACHIAMENTIS ſould be maid be the Judge, or his Serjand, ſworn and admittit in court to that effect, that, quhen neceſſitie requiris, thay may be compellit to compeir and anſwer in law quha ar fugitive thairfra, or refuſis to do the ſamin, *Quon. attach. in prin.* And it is to wit, that efter the perſewar has fund borgh in the hand of the Serjand, to perſew ony partie in ony actioun or cauſe, (*as at mair lenth is befoir ſaid in the titill of the perſewar*) thaireſter the Serjand, als haiſtielie as he may, ſould ſerche and ſeik within that juriſdictioun the partie upon quhom the complaint is maid, and ſould tak with him twa ſufficient witneſſis, and attache him, and cauſe him to find ſufficient borgh, to anſwer to the perſewar, and to the ſkaithis and harmis taxt be the perſewar aganis him, in ſa far as he ſould do of law and reſſoun. *Mod. ten. cur. c.* 2.

C. IV. The cauſe of the attachiament ſould be declarit be the maker thairof.

THE Serjand quha attachis ony perſoun to cum to the Juſtice air, Schiref, or Baron court, or to the court of ony uther frehalder, havand powar of court, ſould declare, at the time of the making of his attachiament, befoir lauchful witneſſis, for quhat cauſe, crime or treſpas he attachis him, and to the quhilk he ſould anſwer to the partie perſewar at ane lauchful day and place; ſwa that he in the mean time may be avyſit how he ſall mak anſwer to his partie adverſare thairanent, that throw ignorance of the cauſe for the quhilk he is attachit, he be not overthrawn and ſuddenlie oppreſt. *Quon. attach. c.* 49. *Aſſiſ. reg. Da. c.* 6. *Stat. Will. c.* 7. *Leg. foreſt. c.* 53. *Mod. ten. cur. c.* 2.

C. V. Of ane Officiar that neglectis to mak attachiament.

GIF the perſewar requiris the Serjand to attache ony partie, and thaireſter the ſaid Serjand ſeis and knawis, within the juriſdictioun of his office, the ſaid partie quhom he ſould attache, and nevertheles makis na attachiament of him; the ſamin Serjand ſould be condemnit to content and pay to the perſewar the damnage and ſkaith ſuſtenit be him throw not making of the attachiament; except he preive ſufficientlie that in doing of his office heiranent he was deforcit be him quhom he ſould have attachit to the court at the inſtance of the perſewar. *Mod. ten. cur. c.* 2.

Anent ſummounding.

C. I. Quhat ſummounding is.

EFTER attachiament is maid and deliverit, *viz.* borgh is fund be baith the parties in the Serjandis handis, the partie ſould be ſummoundit, *Quon. attach. in prin.* For the parties ſould be warnit and ſummoundit to compeir in judgment, als weill to the heid-

courtis

courtis in the zeir as to utheris, gif ony actioun is to be perſewit aganis thame, *Quon. attach. c.* 17. *Mod. ten. cur. c.* 31. Summounding is ane declaratioun of ane certane lauchful day and place, maid befoir ſufficient witneſſis, to ane partie, to compeir in judgment, and anſwer at the inſtance of ane uther partie for debt, or for ony uther crime. *Quon. attach. c.* 1.

C. II. The principal clauſis of ane ſummoundis.

INPRIMIS, It is requirit, that the executour of the ſummound is ſhaw and expreme at the time of the making of the execution, his awin proper name, togidder with the name of his office, *viz.* gif he be the King's Mair, Herauld, Toſchederach, or ony uther Officiar havand powar to ſummound. 2. The ſummoundis ſould contene his name quha is ſummoundit. 3. The perſewaris name ſould be expremit, at quhais inſtance the defendar is ſummoundit. 4. The day ſould be expremit, at the quhilk he that is ſummoundit ſould compeir. 5. The place ſould be ſhawin, at the quhilk he that is ſummoundit ſould compeir. 6. The name of the Judge ſould be declarit befoir quhom the defendar ſould compeir. 7. The executour ſould bewar that he mak not executioun of his ſummoundis upon *Sonday* or haly day: for on ſic dayis the voce of ane Judge, or ony uther Officiar, ſould not be heard, *Lib.* 1. *c.* 8. *Quon. attach. c.* 40. 8. The ſummoundis ſould contene quhairfoir the defendar is ſummoundit, *Lib.* 1. *c.* 8. For gif ane perſoun beis ſummoundit to anſwer in judgment in ony pley or cauſe, the Serjand ſould declare to him in the ſummoundis for quhat debt, thing or cauſe he is ſummoundit, that he may be reaſonablie forewarnit to mak anſwer thairto at the day of compeirance, *Stat. Will. c.* 7. *Quon. attach. c.* 49. *Mod. ten. cur. c.* 2. *Aſſiſ. Reg. Da. c.* 2. *Leg. foreſt. c.* 53. 9. All ſummoundis ſould be execute in the time of day licht, efter the ſone ryſing, and befoir the ganging tó of the ſamin; for all ſummoundis execute in the time of nicht, efter the ſetting of the ſone, is of nane avail, gif ony alledgis and opponis the ſamin, *Quon. attach. c.* 40. *Lib.* 4. *c.* 41. And gif the ſummoundis wantis ony of the ſaidis clauſis, or principal partis, the ſamin is of nane avail, force nor effect. *Lib.* 1. *c.* 8.

C. III. At quhais command ſummoundis ſould be direct.

IT is to wit, that becauſe all ſummoundis ſould be direct and maid at the command of ſum man, it is neceſſarlie requirit of the law, that he quha directis and commandis the ſamin have ane general or ſpecial powar of adminiſtratioun of juſtice gevin and grantit to him be the King, or be ſum uther havand powar of the King; for all ſummoundis maid and execute without command of ane Judge havand powar to do juſtice, is of nane avail. *Lib.* 1. *c.* 8.

C. IV. Be quhom ſummoundis ſould be execute.

SUMMOUNDIS ſould be maid and execute be ane Officiar ſworn and admittit in court, (as is befoir ſaid of attachiamentis,) and be na uther perſoun, *Quon. attach. c.* 1. For the executioun of ſummoundis ſould be maid be ane lauchful ſummounder befoir ſufficient witneſſis, *Lib.* 1. *c.* 8. Bot na burges may be ſummoundit within borgh, bot be the Serjand of the burgh: And gif he be ſummoundit be ony uther, the ſamin is of nane avail, *Leg. burg. c.* 109. And gif the executour of the ſummoundis be negligent,

or

or in ony wayis favorabill to the partie that ſould be ſummoundit, utherwayis than accordis of law and reſſoun, he ſall be thairfoir in the King's will and mercie; and mairover ſall be condemnit to content and pay the damnage and ſkaith ſuſtenit be the pattie perſewar throw his fault, at the conſideratioun of the court, and efter the quantitie of his treſpas. *Lib.* 1. *c.* 8.

C. V. Pane of him quha withhaldis the King's letteris fra the executour thairof.

GIF ony perſoun detenis and with-haldis our ſoverane Lordis letteris or ſummoundis, quhen thay ar deliverit to him to be avyſit thairwith, and will not deliver thame agane to the Meſſinger, Schiref, or executour thairof, fra quhom he reſſavit the ſamin, he may be chargit to enter his perſoun in ward, thair to remane upon his awin expenſis, quhill he be fred and releivit be the King's Grace. 14 *Nov.* 1487, *The King* contra Simon Carutheris *of* Mouſwell, 1 *t.* *c.* 39.

C. VI. Pane of him to quhom the King's letteris ar direct to execute, and failzies thairin.

GIF the Lordis of counſall and ſeſſioun directis our ſoverane Lordis letteris to ony Proveſt, or Baillies of ony burgh, or to ony uther inferiour Judge within this realme, to examine ony witneſſis at the inſtance of ony partie, or to tak inquiſitioun of ony queſtioun or debait betwix ony parties; and the ſaid Proveſt, Baillies, or utheris foirſaid failzie in the executioun of the ſaidis letteris, thay may be callit and perſewit be him at quhais inſtance the ſaidis letteris wer direct, for the damnage, coiſtis and ſkaithis ſuſtenit be him thairthrow. 22 *Junij*, 1492, Elizabeth Lauſon *contra Baillies of* Dundie, 1 *t.* *c.* 93.

C. VII. All inferiour Jugeis within this realme ſould aſſiſt to the executioun of the King's letteris.

GIF our ſoverane Lordis letteris be direct to ony Schiref, or uther his Hienes Officiaris, to aſſiſt and concur with the Meſſinger in the executioun thairof, and the Meſſinger ſerche and ſeik the ſaid Schiref, or uther Officiar, and cannot apprehend him, and thairfoir, in our ſoverane Lordis name and authoritie, requiris ony uther Stewart, Proveſt, Baillie or Clerk within burgh or without, to ſupplie, aſſiſt and fortifie him in the executioun of the ſaidis letteris; gif thay refuſe, and will do nothing thairintill; albeit the ſaidis letteris wer not direct in ſpecial to thame, thay, for thair contemptioun, may be put in ward at the King's pleaſure, thairin to remane upon thair awin expenſis, quhill thay be fred thairfra; and mairover may be deprivit or ſuſpendit fra thair office induring his will. 5 *Jan.* 1516, *The King* contra Patrik Johnſton *Baillie of* Hadingtoun, 1 *t.* *c.* 377.

C. VIII. Letteris of four formis may be execute be divers Officiaris.

LETTERIS of four formis may be execute be divers Officiaris, ſwa that ane Officiar may give ane charge, and ane uther another; bot the Officiar, executour of the charge and letteris, may not prolong or delay the termis or dayis contenit thairin, nor give ane longer time of deliberatioun to the partie chargit, nor do ony thing by the form and tenour of the letteris. 18 *Feb.* 1546, *The Lord* Lindſay *contra* Alexander Kinninmont, 2 *t.* *c.* 174.

C. IX. Of Officiaris takand gude deid, or committand fraud in ſummound-

IT is ſtatute and ordanit, that forſamekle as our ſoverane Lordis liegis ar greitumlie injurit be the the curtouris and Meſſingeris in the executioun of thair offices, that quhair letteris beand direct to thame to put to executioun aganis ony partie, thay leive the letteris un-

unexecute, and takis reward thairfoir fra the partie: And als, quhen letteris ar deliverit to thame to ſummound ony perſounis to pas upon ony aſſiſe or inqueiſt, thay ſummound the hail countrey, and ſyne ſells the peice agane for money, as the perſounis ſummoundit be thame ar of valour; and als, under pretence of thair office and powar committit to thame, divers and ſindrie times oppreſſis our ſoverane Lordis liegis; for remeid quhairof, his Hienes ordanis, that Lyon King of armis call befoir him, at the leiſt anis in the zeir, all and ſindrie Meſſingeris and Officiaris, and tak diligent tryal, examinatioun and inquiſitioun anent the premiſſis: And gif ony beis fund culpabill, and convict thairintill, that he diſcharge thame of thair offices in all time cuming, and in taikin thairof tak thair armis fra thame, as infame perſounis, and cheiſe uther honeſt perſounis in thair places and offices, takand of thame cautioun to execute and exerce thair offices juſtlie and trewlie, quhilk ſall be reſponſal and bund to anſwer to all our ſoverane Lordis liegis, for all damnage, ſkaith and interes to be ſuſtenit be ony of thame, throw the default and negligence of ather of the ſaidis Officiaris: And gif the Lyon fail in the premiſſis, he to be deprivit of his office perpetuallie, and his perſoun wardit at the King's pleaſour, 20 *Julij*, 1527. 1 *t. c.* 305. *Item*, Ane Meſſinger or Officiar of armis, makand ane lieſing or fault, or utherwayis failzieing in the executioun of his office, and convict thairof befoir the Lordis of counſall, aucht and ſould be remittit be thame to the Lyon King of armis, to be deprivit of his armis, and farder puniſt for his treſpas, as the Lyon ſall think maiſt expedient. 5 *Jan.* 1516, *The King* contra Pa. Home. 3 *Feb.* 1523, 1 *t. c.* 400.

ing ony parlie or aſſiſe.

C. X. How ſummoundis ſould be execute.

IT is ſtatute and ordanit, tuiching the maner and form of ſummounding, and executioun thairof, that the ſummounder cum with ſufficient witneſſis to the dwelling-place of the defendar, quhair he makis reſidence, and thair ſummound and charge him befoir the ſaid witneſſis, heirand and ſeand the ſamin, to compeir at a certane day, in ane certane place, befoir ane Judge, to anſwer at a certane perſoun's inſtance, to ane certane querrel and complaint, *viz.* of a pley of land, debt, or ony crime, that the ſaid defendar may know generallie quhairfoir he is ſummoundit; and the ſummounder ſould have with him witneſſis to teſtifie and beir record that thay heard and ſaw the premiſſis. *Quon. attach. c.* 1. *Leg. foreſt. c.* 25. *De jud. c.* 56.

C. XI. The executour of the ſummoundis ſould deliver a copie to the partie.

ANE perſoun beand ſummoundit be ane uther in ony cauſe, civil or criminal, gif he, the time of the making of the ſaid ſummonitioun, or ony time efter the ſamin, and befoir the calling of the ſummoundis, do require ane copie fra the perſewar, and executour of the ſummoundis, that he may knaw thairby the effect thairof, and thay refuis to do the ſamin, the partie ſould not be compellit to anſwer, quhill he be of new ſummoundit. 4 *Julij*, 1526. 23 *Mart.* 1527, John Cranſton *contra* Thomas Ker. 5 *Mart.* 1530, John Macculerne *contra* Bartholomew Craufurd, 1 *t. c.* 279.

C. XII. Of deliverie of a copie of

IN ſummounding of ane pupil havand ane tutor, it is ſufficient to deliver to the tutor the copie of the ſummoundis, or affix the ſamin on

ane ſummoundis to a pupil.

on his zet, and mak lauchful intimatioun thairof to the pupil, to quhom it is not neceſſar to deliver ane uther copie. 10 *Jan.* 1564, Catherine Gorthie, and *Mr.* George Lundie *contra Lord* Methven, 1 *t. c.* 1016.

C. XIII. Of him quha ryvis the King's letteris fra the executour thairof.

GIF ony man ryvis or ſpuilzies violentlie our ſoverane Lordis letteris fra his Schiref in that part, he, for the greit lichtlying and contemptioun done to his Hienes, may be chargit to enter his perſoun in ward, thair to be kept in priſoun in ane cloiſs hous, quhill he be fred be the King. 6 *Aug.* 1479, *The King* contra Thomas Jaffrayſon, 1 *t. c.* 33.

C. XIV. That all ſummoundis be maid of xxi. dayis.

THAT all ſummoundis be maid of 21 dayis. *Ja.* III. *fol.* 46. *act.* 7. 9 *Octob.* 1466.

ITEM, All letteris of ſummoundis, horningis, or four formis, in the quhilk ony perſoun is chargit to compeir, or do ony thing within ane certane ſpace and nombre of dayis, the ſamin time and nombre ſould be underſtuid *excluſivè*, as in this example following: Gif ane be chargit under the pane of horning to do ony thing be virtue of letteris contenand the ſpace of thré dayis, the firſt charge beand gevin the firſt day of the month, the ſecund charge aucht and ſould be gevin the fourt day of the ſaid moneth, and the thrid charge upon the ſevint day thairof: And in ſic caiſis it is not requirit, that baith the day of the executioun or charge, and the day of compeirance, be underſtuid *excluſivè*; bot it is ſufficient that ony ane of thame be excluſive. 1 *Decemb.* 1551, 1 *t. c.* 703.

C. XV. Of the place to the quhilk ony partie ſould be ſummoundit.

IN all actiounis, civil or criminal, the partie defendar ſould be warnit and ſummoundit to compeir *in loco tuto & non ſuſpecto*; becauſe gif he be ſummoundit to defend in the cauſe in ſic a place, in the quhilk, for juſt fear and dredour that may fall on ane conſtant man, he dare not compeir, the ſummounding is of nane avail, and the proces and ſentence, gif ony beis led, deducit or gevin thairupon, may be reducit; ſpeciallie gif the matter or cauſe be of greit wecht and conſequence; for in greit materis na man is haldin to mak or conſtitute Procuratouris to him, quhidder he be lauchfullie or unlauchfullie ſummoundit thairto. 5 *Mart.* 1545, Johne Charterhous *of* Kinfaunis *contra* Johne Moncur, 1 *t. c.* 614.

C. XVI. Na man may be ſummoundit, bot within his awin juriſdictioun.

ALBEIT ane man be perſewit befoir ane Judge of ane uther juriſdictioun, *ratione rei de qua agitur*, or utherwayis, nevertheles he may be ſummoundit onlie within the ſaid Judge's juriſdictioun, 1 *Feb.* 1549, Johne Tenent *contra* Peter Colquhoun, 2 *t. c.* 194. *Item*, Gif a man has landis lyand within ane juriſdictioun, and his dwelling-place within ane uther juriſdictioun, in all actiounis and cauſis concerning the ſaidis landis, he may be callit befoir the Judge of the ſamin juriſdictioun quhair the landis lyis; and it is ſufficient to ſummound him at the ground of the ſaidis landis, and mak intimatioun thairof at his dwelling-place, be affixing of a copie of the ſummoundis, gif he cannot be perſonallie apprehendit, 20 *Decemb.* 1550, 2 *t. c.* 230. Attour, in all cauſis quhair ſummounding of ony perſoun, be opin proclamatioun at the mercat-croce of ony burgh, and

and on the ground of the landis debaitabill, is requirit and admittit, intimatioun thairof ſould be maid to him perſonallie, or at his dwelling-place that is ſummoundit, befoir the day of compeirance. *Ult. Julij*, 1557, *The Laird of* Pitcur *contra* Alexander Barclay, 1 *t. c.* 1381.

C. XVII. Summounding in actiounis of movabill gudis.

In all actiounis and pleyis of wrang and unlauch, in all civil actiounis intentit and perſewit for movabill gudis, the ſummoundis ſould be execute upon the defendar beand perſonallie apprehendit, or at his dwelling-place quhair he makis reſidence, and in na uther place. *Quon. attach. c.* 1.

C. XVIII. Summounding in actiounis of heritage, and utheris.

In pleyis of landis and heritage, in all actiounis of ſchawing of halding, and in cauſis quhair ſuperiouris clamis ſervice for landis and tenementis, and in utheris ſiclike cauſis, the ſummoundis ſould be execute in ane uther maner nor is abone expremit; becauſe the ſamin ſould be maid befoir witneſſis, upon the ground of the landis debaitabill, and not at the dwelling-place quhair the defendar remanis, bot intimatioun thairof alanerlie ſould be maid at his dwelling-place; and he that is ſummoundit in ony ſic cais, ſould be ſummoundit upon xl. dayis warning, and may not be attachit in his bodie, nor in his gudis; for it is ſufficient that he be ſummoundit alanerlie, as ſaid is, *Quon. attach. c.* 1.

C. XIX Anent ſummounding of partakaris and complices in ony crime befoir the Juſtice.

Gif it happinis ony perſoun within this realme to commit ſlaughter, mutilatioun, or ony uther crime, quhairthrow thay may be accuſit befoir the Juſtice-general and his deputis, and ather of the parties intendis to perſew utheris for the ſaid crimes, thair aucht ane certane day to be aſſignit to thame to compeir and anſwer upon the ſaidis crimes, to the quhilk it ſould not be leaſum to ather of the parties to ſummound ony ma perſounis for compeirance, nor thame quha wer actuallie preſent at the committing of the ſaid crime: And gif thair was ony greit multitude ſuſpect as art and part, and aſſiſtaris with ather of the ſaidis parties, thay aucht to be ſuperſedit to the * nixt day of the Juſtice air, to be haldin in that ſchire, or boundis quhair thay dwell; and ſould on na ways be ſummoundit to the ſaid day, and that for eſchewing of cumber and troubill, and alſwa for eſchewing of expenſis in drawing of a multitude of people or puir bodies fra thair awin houſis: And gif ather of the ſaidis parties ſall happin to ſummound ony ſic perſounis alledgit complices, and ſpeciallie puir and miſerabill perſounis, ſic as plewmen, fiſcharis, taſkaris, cottaris, or uther puir laboraris of the ground, and will not accuſe thame thairefter; or zit, thay beand accuſit, and put to the knawlege of ane inqueiſt for the ſaidis crimes, beis quyte and clengit thairof, the partie that accuſis thame, or ony of thame that beis ſummoundit, ſall refound, content and pay to ilk perſoun that beis clengit, his expenſis, togidder with the ſowme of ten pundis for the ſkaith and interes ſuſtenit be him; and farder, his perſoun ſall be put in ward, thair to remane during the King's will, for the malicious troublance and moleſtatioun done to his Hienes lieges. 20 *Jan.* 1535, *L.* Pitſligo *contra L.* Philorth, 1 *t. c.* 658.

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C. XX. In actiounis of treſſoun.

All Erlis, Lordis, Baronis, and utheris the King's liegis, alledgit

the partie ſould be ſummoundit upon xl. dayis.

ledgit to have committit ony treſſoun or leſe-majeſtie, and ſummoundit be his Hienes thairupon, aucht and ſould be ſummoundit upon xl. dayis warning to that effect. 11 *Julij*, 1515, 1 *t. c.* 387.

C. XXI. The ordour of ſummounding of perſounis in civil actiounis.

ITEM, For eſchewing of greit inconvenientis and fraud done to our ſoverane Lordis lieges, be ſummounding of thame at thair dwelling-places, and oft-times falſlie, and gettis never knawledge thairof, it is ſtatute and ordanit *ut in lib. impreſſo. Ja.* V. *fol.* 128. *act.* 45. 3 *Decemb.* 1540.

C. XXII. Time of ſummoundis in recent ſpuilzeis.

In actiounis of recent ſpuilzie, the defendar may be warnit and ſummoundit upon the ſpace of xv. dayis, to anſwer thairanent. 27 *Feb.* 1541, 2 *t. c.* 65.

C. XXIII. Summounding in actioun of recognitioun.

In all actiounis and cauſis of recognitioun of landis, for alienatioun thairof, the defendar ſould be ſummoundit, not at the ground of the landis, and at the paroche kirk quhair the landis lyis onlie, bot alſwa perſonallie, or at his dwelling-place; or utherwayis the proces and ſentence, gif ony be gevin, is of nane avail, and may be reducit. 2 *Decemb.* 1561, Jonet Kennedie *contra Laird of* Blairquhan, 1 *t. c.* 1260.

C. XXIV. Summounding at the dwelling-place.

Ane beand ſummoundit at the place quhair his wife and familie remanis the time of the executioun, is lauchfullie ſummoundit, notwithſtanding that he himſelf the time of the executioun, and lang befoir, dwelt in ane uther place. 19 *Octob.* 1554, 1 *t. c.* 756.

C. XXV. Summounding of a minor beand at the ſchulis.

Ane bairn or minor beand in ony place or town, quhair he remanis at the ſchulis, may be ſummoundit at the ſaid place quhair he remanis at the ſchulis; and albeit it be objectit be him efterwart, that the time of the executioun of the ſummoundis, and certane ſpace of befoir, immediatlie precedand the ſamin, he was in ane uther place; zit nevertheles the ſaidis ſummoundis is lauchful and ſufficient, gif he was thair alanerlie to recreat him, or tak the air in the feildis, or to viſie freindis, and thairefter of purpoſe and mind to return to the ſaid ſchulis. 10 *Jan*, 1564, Catherine Gorthie, *and M.* George Lundie, *contra Lord* Methven, 1 *t. c.* 833.

C. XXVI. Anent proces to be had aganis perſounis paſſand furth of the realme. *Mar. R. fol.* 160. *act.* 5. 20 *Junij*, 1555.

C. XXVII. How he that is furth of the realme may be ſummoundit.

Gif ony man be furth of the realme, he aucht and ſould be ſummoundit in all actiounis and cauſis, upon threſcoir dayis warning at the firſt term, and thairefter in all uther termis of the proces, he may be ſummoundit upon fourtie dayis, or fewar, be oppin proclamatioun at the principal mercat-croce quhair he dwellis; bot gif he, befoir his departure furth of the realme, be lauchfullie ſummoundit perſonallie, or at his dwelling-houſe, and thairefter pas furth of the realme, it is not neceſſar, in the leiding and deducing of the proces aganis him, that he be ſummoundit upon xl. dayis warning, bot it is ſufficient to ſummound him upon ſa mony dayis as gif he had remanit within the realme. 23 *Mart.* 1541. 26 *Julij*, 1540. 23 *Jan.* 1541, 1 *t. c.* 1046.

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C. XXVIII. He quha is furth of the realme, may not in the mean time be skairhit, or perſewit in judgment.

GIF ony havand the King's reſpite and licence to depart furth of the realme, beirand, that he ſall not be hurt nor injurit in his landis, maillingis nor gudis that he had ſicht to, or that he had in poſſeſſioun the time of his departing furth of the realme, quhill his hame cuming agane, and returning to the ſamin; gif ane uther man perſew him, and put him out of his poſſeſſioun, in the mean time, during his reſpeit and abſence, he, efter his return, aucht and ſould be reponit and put agane in the ſamin landis and poſſeſſioun, in ſiclike form and conditioun of bruiking, jolſing and uſing thairof, as he uſit, had, and was in, the time of his departing furth of the realme: And alſwa, all ſummoundis and proceſs led and intentit aganis him, efter his departing furth of the realme, and befoir his returning and iſche of his reſpeit, is in the ſelf null and of nane avail, force nor effect. 21 *Mart.* 1486, James *Erle of* Buchane *contra* James Ogilvie *of* Airth, 1 *r. c.* 33.

C. XXIX. How ane pupillis tutoris ſould be ſummoundit.

GIF ane perſoun be to intent ſummoundis aganis ane minor, it is neceſſar to warn his tutoris and curatouris in ſpecial, at the leiſt ſa mony of thame as ar knawin to him, and the remanent be opin proclamatioun at the principal mercat-cros quhair the pupil dwellis; except the pupil, or his procuratouris alledge, and inſtantlie preive, that, the time of the executioun of the ſummoundis, the perſewar knew, or at the leiſt micht have ſufficientlie knawin, that the pupil had uther tutoris or curatouris quha wer not ſummoundit in ſpecial. 10 *Jan.* 1564, Gorthie *contra Lord* Methven, 1 *r. c.* 1324.

C. XXX. The King's reſpeit or licence is not prejudicial to the richt of ony private perſoun.

GIF ony perſoun obtene our ſoverane Lordis letteris of licence to pas furth of the realme, for his awin privie effairis, with ane reſpeit of all actiounis intentit or to be intentit aganis him, the ſamin reſpeit or licence makis na ſtop nor impediment to ony of the King's lieges to call and perſew him at thair awin inſtance; becauſe the ſaid reſpeit ſould on na wayis be hurtful nor prejudicial to the actioun of partie, bot ſould have effect in the King's actiounis alanerlie, and ſould cauſe thame to ceis during the time contenit in the ſaid licence. 28 *Jan.* 1526, Robert Orrok *contra* David Boſwell *of* Balmuto, 1 *r. c.* 277.

C. XXXI. INDORSATIOUN of the King's letteris ſould be ſtampt. *Ja.* III. *fol.* 53. *act.* 40. 20 *Novemb.* 1469. *Ja.* V. *fol.* 128. *act.* 44. 3 *Decemb.* 1540.

C. XXXII. Record of ſummoundis, and probatioun of the executioun.

IT is requirit, that ilk executour of ſummoundis preive ſufficientlie in judgment, befoir ane Judge, that he has execute and maid the ſamin lauchfullie, befoir the partie defendar anſwer thairto, bot gif of his awin will, and without ſummoundis, raiſhlie and fuliſhlie he mak anſwer to the ſamin, *Lib.* 1. *c.* 8. And the executour ſould not ſweir himſelf, ſuppois the partie that is ſummoundit compeir not; bot the witneſſis ſall mak faith in judgment that thay war preſent, and requirit to be witneſſis, and heard and ſaw the ſummoundis lauchfullie execute, *viz.* that the executour thairof ſummoundit ſic ane perſoun lauchfullie, ſic ane day, at ſic ane place, to compeir at ſic ane day, in ſic ane place, be ſic ane borgh, to anſwer to ſic a man's perſute be name, upon ſic ane

actioun, *Leg. foreſt. c.* 25. *De jud. c.* 14. *ac* 56. *Mod ten. cur. c.* 3. And gif the exeeutour firſt and foirmoſt preivis not the attachiament lauchfullie maid, and efterwart the ſummoundis, the defendar, gif he pleiſis, may compeir and annul all that proces, becauſe of the attachiament, or of the ſummoundis not lauchfullie provin; for quhair the beginning and heid failzies, the memberis may not be of ony force, virtue or effect, in thair awin kind, *Mod. ten. cur. c.* 4. *Item*, It is to wit, that the ſummoundar ſould have with him his witneſſis, togidder with his ſummoundis; for eſter that he is enterit in court at the day of the ſummoundis, it is not leaſum to him to pas furth of judgment, to adviſe anent the making of the record of the ſummoundis, for the ſamin conſiſtis in his awin proper deid. *Lib.* 1. *c.* 8.

C. XXXIII. OF the executioun of ſummoundis, and verificatioun thairof. *Ja.* I. *fol.* 20. *act.* 127. 6 *Mart.* 1429.

C. XXXIV. The indorſatioun ſould contene how and quhair the partie is ſummoundit. INDORSATIOUN of ſummoundis is not ſufficient, gif na mentioun be maid in the ſamin, quhidder the defendar was ſummoundit perſonallie, or at his dwelling-place. *Ult. Julij*, 1550, 1 *t. c.* 1127.

C. XXXV. Of the defendar compeirand in judgment. HE that is ſummoundit, challengit, or perſewit in ane actioun or cauſe, quhen he compeiris in court, ſould heir the attachiament and ſummoundis red to him, gif he deſires the ſamin, *viz.* how he is attachit and ſummoundit; and may oppone and object aganis the ſamin, gif he hes ony reſſonabill cauſe, or gude reſſoun; for the attachiament and ſummoundis ar the fundament and ground of the cauſe, and thairfoir ſould be firſt and cheiflie conſiderit, and admittit or repellit. *Quon. attach. c.* 85. *De jud. c.* 42.

C. XXXVI. Of the defendar not compeirand himſelf, nor be ony in his name. GIF he that is ſummoundit nather compeir perſonallie, nather be ony in his name, at the day to the quhilk he is ſummoundit, the perſewar the ſamin day ſall compeir befoir the Judge, and offer him readie to perſew, and ſwa ſall remane thré dayis in the court: And gif the defendar failzies to compeir the feird day, and the executour of the ſummoundis compeir, and alledge that he lauchfullie ſummoundit the defendar, and offerris him to preive the ſamin, conform to the conſuetude and uſe of the court; the defendar that was of befoir ſummoundit, ſall be ſummoundit agane upon fiftene dayis at the leiſt, to compeir and anſwer to the firſt and principal ſummoundis, and alſo to ſchew ane reſſonabill cauſe quhy he, beand firſt ſummoundit, nather compeirit himſelf, nor be ony uther in his name; and ſwa, gif he be thryſe ſummoundit to this effect, and nather compeiris nor ſendis at the thrid ſummoundis, his landis and tenementis ſall be recognoſcit in the King's handis, to remane with his Grace for the ſpace of fiftene dayis: And gif the defendar cumis not within the ſaid fiftene dayis, the poſſeſſioun thairof ſall be adjudgit to the perſewar, and the defendar ſall never be heard to ſeik reſtitutioun of the ſaidis landis; bot be the breve of richt alanerlie, deſire and his ſaidis landis to be lettin to him to borgh, he ſall be chargit to compeir within four dayis, and ſall have that quhilk he ſould have of the law, and ſwa he may recover the poſſeſſioun of his ſaidis landis; bot gif the defendar compeir at the thrid ſummoundis, and

and grantis that he was ſa oft ſummoundit, he ſall tyne incontinent the poſſeſſioun of his landis, recognoſcit in the King's handis as ſaid is, bot gif he may ſchaw ane reſſonabill eſſonzie, or excuſe of his abſence, be reſſoun of the King's ſervice, the quhilk he aucht and ſould inſtantlie preive. And gif the defendar compeiris at the thrid day, and denyis all the ſaidis ſummoundis, he and twelf perſounis with him ſall ſweir for ilk ſummoundis at the ſamin day; at the quhilk gif ony of the ſaidis perſounis happinis to be abſent, or compeiris and is lauchfullie repellit, it is not leaſum to ſubſtitute ane uther in his place; and thairfoir the defendar at the ſame time ſall tyne and foirfault the ſaſine of his ſaidis landis, be reſſoun of his contemptioun and failzie. And gif he, and the ſaidis perſounis that ſweiris with him, makis faith ſufficient, the defendar ſall be compellit the ſamin day to mak anſwer in the principal cauſe, *Lib.* 1. *c.* 10. *De jud. c.* 12. And it is to wit, that the premiſſis anent the abſence of the defendar is to be underſtuid, quhen he is *ſimpliciter* ſummoundit, but ony borgh or pledges fund be him; for gif he hes fund ony borgh to compeir and anſwer as law will, and the ſamin be ſufficientlie provin, as uſe is *in nova diſſaſina*, or in actiounis concerning the executioun of thingis done in the King's court; in this cais, gif the defendar at the firſt day nather compeir nor uſe ony lauchful eſſonzie, his pledgis ſall be in the King's mercie, and may be poindit and diſtreinzeit upon the principal cauſe; and that thriſe may be done, gif the defendar, for quhom thay ar pledgis, happin to be abſent for thré dayis, he beand thriſe ſummoundit thairto: And gif he compeir not at the thrid ſummoundis, his landis ſall be recognoſcit, and remane in the King's handis in maner abone expremit; and mairover, his borgh ſall be in the King's will, and ſall be ſummoundit to ane certane day to be condempnit, and reſſave judgment be reſſoun of his burrow-gang. And the like ordour and form of proces ſould be obſervit in criminal cauſis, as breking of the King's peace, except the defendar's bodie be tane and apprehendit, gif he failzeis to compeir at the thrid ſummoundis; and nevertheles his pledge ſall remane in the King's will. *Lib* 1, *c.* 9.

C. XXXVII.

THE partie followar not compeirand to perſew, payis ane unlaw, and his adverſaris expenſis. *Ja.* IV. *fol.* 93. *act.* 58. 18 *Maij*, 1491.

C. XXXVIII. Of the perſewar not compeirand.

GIF the perſewar compeiris not at the firſt day of compeirance in ony clame or actioun, intentit and perſewit be him, he may uſe ſic reſſonabill eſſonzeis and excuſis as is grantit and permittit of the law to the defendar: Bot gif he nather compeiris, nor ſchawis ony reſſonabill eſſonzie of his abſence, then the defendar compeirand perſonallie, or be his Procuratour, may proteſt, and deſire that he be not compellit to anſwer unto the time he be of new ſummoundit agane, and the expenſis maid be him in the cauſe paid and gevin to him; and in this cais, the defendar ſall pas fré fra the ſaid ſummoundis for that time, and the perſewar ſall alanerlie tine his ſummoundis, and not his actioun and cauſe; for he may efterwart, quhen he pleiſis, rais letteris and ſummoundis in the ſamin cauſe; bot befoir he be heard to perſew, he ſall, be reſſoun of his failzie

and

and contemptioun foirſaid, firſt pay the ſaid expenſis to the defendar; and mairover, his pledgis, gif ony beis fund be him for the perſute of his actioun, ſall be in the King's will and mercie. *Quon. attach. c.* 1.

IN criminal cauſis, gif the perſewar compeiris not in maner abone expremit, then, becauſe he may not prejudge nor hurt the King anent his interes, bot is bund and oblift of the law to perſew, and may not tyne in the cauſe, bot in ſa far as concernis himſelf alanerlie, his bodie may be takin and put in priſoun, thair to be ſurelie and ſaiflie keipt, until he perſew the actioun and cauſe; and mairover, be reſſoun of his default, his pledgis ſall be in the King's mercie. *Ex lib. impreſſ. c.* 10.

C. XXXIX. Of the perſewar and defendar baith abſent.

QUHEN it ſall happin baith the perſewar that hes ſummoundit, and the defendar that is ſummoundit, to be abſent at the day of compeirance, it is leaſum to the King, or his Juſtice, gif he pleaſis, to call and perſew thame for thair contempt and fals clame; for in this cais thay may baith be decernit to be in the King's will be reſſoun of thair default and contemptioun. *Lib. 1. c.* 10. *in fine.*

C. XL.

THE ordour for ſummounding of parties to compeir befoir the Juſtice, or uther Jugeis. *Mar. R. fol.* 160. *act.* 6. 20 *Junij*, 1555.

C. XLI. How to ſummound ony perſoun not havand a certane dwelling-place.

QUHEN ony perſoun neidis to be ſummoundit, he aucht to be ſummoundit firſt perſonallie, or at his dwelling-place, gif he ony hes, conform to the act of parliament: And gif he be a vagabond, havand na certane domicile, nor zit can be apprehendit perſonallie, it is ſufficient to ſummound him be opin proclamatioun at the heid burgh of the ſchire quhair he maiſt commoundlie haunſit and uſit befoir the time of the executioun of the ſaidis ſummoundis, 22 *Feb.* 1491, Patrik Home *of* Fatſcaſtell *contra* Peronell Libertoun, 1 *t. c.* 78. All perſounis dwelland and remanand within this realme, ſall be ſummoundit perſonallie, or at thair dwelling-place: And utherwayis gif thay be ſummoundit be opin proclamation at the mercat-croce of the burgh of the juriſdictioun, within the quhilk thay dwell, thay ar haldin as not ſummoundit; and thairfoir all proces led aganis thame be reſſoun of the ſaid ſummoundis is of nane avail, and may be reducit. 25 *Junij*, 1550, 1 *t. c.* 1117.

C. XLII. How ane that is abſent may be ſummoundit.

GIF ony man dwelland on the north-ſide of the water of *Forth*, beis ſummoundit in ony actioun or cauſe upon xv. dayis; and befoir the ſummoundis was execute upon him, he was on the ſouth-ſide of the water of *Forth*, or he was put furth of the realme, it is not neceſſar that he anſwer to the ſaidis ſummoundis, gif he will preive, that befoir the executing thairof he was abſent, as ſaid is: And the like is to be underſtuid of thame that ar bezond *Drumalban*, or the water of *Spay*, and ar ſummoundit as ſaid is, *Lib.* 4. *c.* 4.

C. XLIII. Summoundis befoir the Lordis of ſeſſioun ſould not be callit be tikkettis.

THE Lordis, for reſſonabill cauſis moving thame, and in ſpecial becauſe of the greit miſordour in calling of ſummoundis be tikkettis, and importunitie of the greit men, thairfoir in time to cum ordanis, that na ſummoundis be callit bot be ordour of tabill, and na tik-

tikkettis nor new inventiounis to be admittit be na maner of way: And in cais ſummoundis be callit be tikkettis, it ſall be ane ſufficient cauſe to reduce thame agane, ſwa that fra thyne furth the Lordis may procede without moleſtatioun or inquietatioun, efter the form of the tabill. 23 *Feb.* 1528, 1 *t. c.* 352.

Anent a libel and clame.

C. I. Definitioun of a libel.

ANE libel is ane petitioun maid in writ be the perſewar, contenand the namis of the Judge, of the perſewar, and of the defendar, the thing that is clamit, and the cauſe quhairfoir the famin is clamit and aſkit. The libel is offerit and gevin to the defendar, that he may thairby knaw quhidder he will pley and contend thairefter with his partie, or not; and gif he will pley, that he may be inſtructit to do the ſamin, knawand be the libel the actioun and cauſe quhairfoir he is perſewit; and thairfoir efter the ſamin is offerit and gevin to the defendar, he ſould have ane certane ſpace to adviſe and deliberate with himſelf quhat he thinkis beſt to be done. *De except. c. 7. Ex lib. Sconen.*

C. II. The principal partis of a libel.

ANE relevant libel ſould have thré partis, the major, the minor, and the concluſioun, which may be placed and put in the begining or in the end thairof, as the perſewar pleaſis, 1 *Mart.* 1541, *The Lord* Oliphant *contra Laird of* Innes, 2 *t. c.* 67. *Item,* A libel beand conceivit *alternativè*, in the narrative, clameand certane gudis, or els the price thairof; gif in the concluſioun thairof the petitioun be ſimple, deſyrand the price and avail of the gudis alanerlie, or zit the gudis alanerlie, the ſamin libel and clame is inept and irrelevant, *quia in duobus vel pluribus alternative debitis, electio eſt debitoris; nec poteſt creditor alterum eorum, quamvis minus, eligere: et concludendo ſuper uno tantùm, plus petere cenſetur ineptè.* 22 *April.* 1555, *M.* Johne Arnot *contra* Robert Miln, 1 *t. c.* 1192. *Item,* Gif ony man libel a ſummoundis and clame aganis ane uther, and thairin clamis mair in the concluſioun nor is contenit in the narrative of the ſaid libel and clame, the defendar aucht to be aſſoilzeit fra that part thairof quhilk is mair in the concluſioun nor in the narrative; and zit nevertheles may be condempnit in the reſt, thay beand ſufficientlie provin, 17 *Novemb.* 1533, *M.* William Broun *contra Maiſter of* Halis, 1 *t. c.* 640. *Item,* Gif ane ſummoundis, libel or clame contene not in the narrative the perſewaris interes or titil, bot onlie ane ſimpil and nakit narratioun, zit gif the concluſion thairof contenis it, the ſamin libel is ſufficient and relevant, *quia concluſio libelli præcipuè eſt inſpicienda,* 1 *Mart.* 1541, 1 *t. c.* 1069.

C. III. Libel in criminal cauſis.

ANE gude and relevant libel in criminal cauſis ſould contene the name of the Judge, of the perſewar, and of the defendar, togidder with the day, month and zeir of the crime, *De except. c. 7. Ex lib. Scon.* And thairfoir in all actiounis of injurie ſould be expreſt the zeir, the day, the month, the place quhair the injurie was done, the maner how the ſamin was done, togidder with the

damnage and ſkaith ſuſtenit be him to quhom the famin is done, the quhilkis ſkaith and harmis ſould be expremit in certane nombre and quantitie, *Stat.* 1. *Ro. Br. c.* 13. *Stat.* 2. *Ro. Br. c.* 14. And alſwa, in all actiounis of the ſaid nature, the libel and clame beand relevant, and lauchfullie maid, ſould contene the namis of the parties, and of the Actornayis, gif the cauſe be pleidit be Actornayis or Procuratouris. *Stat.* 2. *Ro. Br. c.* 33. *Quon. attach. c.* 79. *Mod ten. cur. c.* 18.

C. IV. Libel in actiounis of aſſythment.

SINDRIE perſounis perſewand for aſſythment to be gevin to thame for thair freind, and not condeſcendand ſpeciallie in thair libel how mekle ſould be gevin to everie ane of thame, the Lordis be ſentence interloqutory fand the ſaid libel relevant and ſpecial aneuch; becauſe the decrete that was to be gevin thairupon was to be gevin be diſcretioun and modificatioun of the ſaidis Lordis. *Ult. Julij*, 1540, 1 *t. c.* 1378.

C. V. Taxatioun of ſkaithis and harmis in criminal cauſis.

IN actiounis of thift, or uther felonie, the perſewar, in his clame or libel, ſould taxt and eſtimat his harmis and ſkaithis ſuſtenit be him, throw committing of the ſaid treſpas, to ane verie greit ſowme and quantitie, to the end that the defendar may not gudlie find ſufficient borgh to anſwer to him anent the taxt harmis, and ſwa ſall be compellit to underly the law, and pas to the knawlege of ane aſſiſe. *Mod. ten. cur. c.* 45.

C. VI. Clame in actiounis of cattel.

IN pleyis and actiounis of cattel, the libel or clame ſould contene the zeir, the day, the place quhair the cattel war takin, and quhair thay war detenit and with-haldin, the nombre of the cattel, togidder with a certane eſtimatioun and quantitie of the damnage ſuſtenit be the perſewar throw wanting of his ſaid cattel, *Stat.* 1. *Ro. Br. c.* 13. *Stat.* 2. *Ro. Br. c.* 14. And mairover, in ſic actiounis ſould be expremit the name or kind of the cattel, as horſe, ox, kow, togidder with the colour thairof, *viz.* that the ſamin was blak, quhyte, or ſum uther colour.

C. VII. Clame in actiounis of debt.

IN actiounis of debt, the perſewar ſould ask his debt fra the defendar, and expreme in his libel or clame the zeir, the day, quantitie of the debt, the cauſe quhairfoir the ſamin is auchtand, the maner how the ſamin ſould have bene payit, togidder with ane certane eſtimatioun of the coiſt, damnage and ſkaith ſuſtenit be him throw the want thairof; bot as tuiching the place quhair the debt was contractit, it is not neceſſarlie requirit that the ſame ſould be expremit in the libel or clame, *Quon. attach. c.* 1. *Stat.* 1. *Ro. Br. c.* 12. *Stat.* 2. *Ro. Br. c.* 16. And gif the perſewar clamis gold or ſilver, he ſould expreme the nombre and quantitie thairof: And gif he askis ony thing that conſiſtis in meaſour, he ſould declare in ſpecial the meaſour of the ſamin, *De except. c.* 12. *ex lib. Scon.* *Item*, In all actiounis of contractis or conventiounis, the libel and clame may not be caſtin as irrelevant, gif the ſamin contene the zeir and the day of the making of the conventioun, the maner how it was maid, the way how it was brokin, togidder with a certane taxatioun and quantitie of the ſkaith ſuſtenit be the perſewar, throw brek-

breking or not fulfilling of the ſamin. *Stat.* 1. *Ro. Br. c.* 15. *Stat.* 2. *c.* 12.

C. VIII. Libel in actiounis of troublit poſſeſſioun.

GIF ony man callis and perſewis ane uther for troubling and moleſting of him in his landis and poſſeſſiounis, and in his libel ſpecifies na time of the ſaid troublance, *viz.* day, moneth nor zeir, the ſamin libel is general and inept, and thairfoir the ſentence followand thairupon is of nane avail, and aucht and ſould be reducit. 10 *Mart.* 1550, *The Laird of* Roſſie *contra Schiref of* Perth, 1 *t. c.* 782.

C. IX. Libel in actioun of ejectioun.

IN actioun of ejectioun, the perſewar aucht and ſould libel poſſeſſioun, with ſum titil to the landis out of the quhilk he is ejectit; for the libel is not relevant, gif it contene na ſufficient titil, ſic as takiſman, mailler, or ſum uther ſufficient richt. 2 *Mart.* 1573, Robert Wiſchert *contra the Laird of* Arbuthnot, 2 *t. c.* 355.

C. X. Libel in actiounis of ſpuilzie.

IN actiounis of ſpuilzie the perſewar aucht and ſould libel, that he was in poſſeſſioun of the landis or gudis ſpuilzeit the time of the ſpuilzie: And it is ſufficient to libel the ſamin poſſeſſioun in general, ſuppois he ſpecifie not in his libel the maner and quantitie of his poſſeſſioun. 6 *Mart.* 1543, Nicol Dundas *contra* Nicol Hagie, 2 *t. c.* 157,

C. XI. The libel ſould contene ſum titill.

ANE libel, clame or petitioun is inept, gif it contenis, na richt nor titil pertening to the perſewar, bot onlie a nakit poſſeſſioun, without ony maner of titil. 9 *April.* 1546, *The Lord* Cathcart *contra* Agnes Craufurd, 1 *t. c.* 618.

C. XII. Libel in actiounis of ſpuilzie and ejectioun.

IN actiounis of ſpuilzie and ejectioun the perſewar aucht and ſould libel poſſeſſioun, and violent ejectioun, and preive thame baith ſufficientlie; and it is not requiſite that he libel ony titil; bot gif he libellis a titil with his poſſeſſioun, it is not neceſſar to preive the ſamin, bot aucht and ſould ſchaw the ſamin, *quia tenetur oſtendere, ſed non probare.* 22 *Mart.* 1548, Jonet Montgomrie *contra* John Hamiltoun. 18 *Novemb.* 1541, 2 *t. c.* 207.

C. XIII. Libel and clame in actiounis of heritage.

IT is to wit, that in actiounis of richt and heritage, ſumtime thair is leſs contenit in the ſummoundis than in the clame, and ſumtime mair; and ſumtime the perſewar may err in the ſummoundis, puttand ane wrang name for ane richt; and ſumtime he may commit errour in the quantitie of the ſervice clamit be him. Gif thair be leſs in the ſummoundis than is contenit in the clame or petitioun, quhidder the ſamin be of the pertinentis, or of the principal landis, the perſewar may ask na mair at that time, be reſſoun of that ſummoundis, than is contenit in the ſamin. Gif thair be mair contenit in the ſummoundis than in the clame, the perſewar may pas fra that quilk is mair for that time, and perſew the ſuperplus be virtue of the ſamin ſelf ſummoundis. Gif the perſewar hes committit errour in his ſummoundis, anent the name or ſirname of his partie, be the rigour of law he ſould rais new ſummoundis. Gif the perſewar clame mair ſervice and dewtie than he ſould have, and is auchtand to him, that ſummoundis, be the rigour of law, is of nane avail:

avail: And gif he clamis leſs ſervice and dewtie than he ſould have for the landis and tenementis, he may not efterwart clame ony mair thairfoir, becauſe he, be his awin clame and petitioun, prejudgit and hurt himſelf anent the ſervice and dewtie aucht to him be the defendar: Bot gif ony man in judgment evictis and obtenis, or utherwayis buyis the landis fra the defendar, the perſewar, quha befoir perſewit les than he ſould have done, may clame the haill ſervice and dewties aucht to him, fra him quha obtenit or bocht the ſaid landis, *Lib.* 3. *c.* 21. *De judic. c.* 102.

C. XIV. Libel concerning ane act of adjournal.

GIF ony perſoun be perſewit civillie for ony crime or treſpas confeſſit be him befoir in the Juſtice air, takand him thairfoir to his remiſſioun, albeit the ſummoundis intentit aganis him civillie contene nather day nor moneth of the committing of the ſaid crime, the ſamin is relevant and ſpecial anouch, becauſe it is foundit upon ane act of adjournal, quhilk paſt upon ane confeſſioun judicial, 10 *Mart.* 1533, 1 *t. c.* 963. In actiounis of aſſythment perſewit be reſſoun of ane act of adjournal befoir the civil Judge, it is not neceſſar that the libel contene zeir, moneth or day of the committing of the ſlauchter, 23 *Feb.* 1541, MakCartnay *contra N.* And mairover, *variatio proprii nominis non nocet, ubi conſtat de perſona*, in a libel, act of adjournal, contract, or ony uther writ or evident. 17 *Feb.* 1541, 2 *t. c.* 26.

C. XV. Libel in actiounis of reductioun of ane infeftment.

GIF ony man callis and perſewis for productioun and reductioun of ane uther manis chartour, evident, or writ, it is not neceſſar to him to libel the dait thairof; and gif he happinis to libel the ſamin wrangouſlie, he may paſs thairfra befoir litiſconteſtatioun be maid in the cauſe, 9 *Feb.* 1541, William Rutherfurd *contra the Erle* Bothwell, 2 *t. c.* 52. *Item*, In the actioun of reductioun of infeftmentis or evidentis, be reſſoun of feir and dredour, the perſewar aucht and ſould, in his libel, offer reſtitutioun of the ſowmis of money, or uther gude deid, gif ony was reſſavit be him for making of the ſaid infeftment, utherwayis his libel is not relevant. 6 *Julij*, 1543, *Laird of* Wauchton *contra* Henrie Sinclare, 2 *t. c.* 149.

C. XVI. Taxatioun of harmis and ſkaithis in civil actiounis.

IN actiounis of debt, or uther civil cauſis, the ſkaithis and harmis ſould be taxt be the perſewar in his clame and libel, within the price and ſowme of the principal actioun, be the ſowme of thré half-penies, *Mod. ten. cur. c.* 7. *Stat.* 2. *Ro. Br. c.* 33. For, of the law, the damnage and ſkaith ſould be les nor the principal cauſe or debt, *De maritag. c.* 13. And gif the perſewar taxis and modifyis them heicher, and abone the principal cauſe, the defendar may, be juſt excuſatioun, caſt his libel or clame, and ſwa paſs quyte at that time, until he be of new ſummoundit agane. *Mod. ten. cur. c.* 7.

C. XVII. The Judge may give abſolvitor fra ane irrelevant libel.

GIF ony libel or clame be irrelevant, the Judge, of his office, may aſſoilzie the defendar fra the ſamin as it is libellit; albeit the defendar, nor his procuratour, perſave not nor object the errour or irrelevancie of the ſamin: And it is not neceſſar that the Judge expreme ſpeciallie ony cauſe quhy he dois the ſamin. 15 *Mart.* 1540, Robert

Robert Lumiſdene *contra the Erle of* Rothes. 28 *Junij*, 1543, 2 *t. c.* 31.

C. XVIII. Anent him quha libellis and perſewis as aſſignay.

GIF ony man, as ceſſioner and aſſignay maid be ane uther, to ony actioun of ſpuilzie or ejectioun, callis and perſewis thairfoir, and libellis not in his ſummoundis that the maker of the aſſignatioun, the time of the alledgit ſpuilzie, was in poſſeſſioun of the gudis alledgit ſpuilzeit, the ſamin libel is inept, and ſould reſſave na proces, albeit the defendar oppone nathing aganis the ſamin; and gif ony be led and deducit thairupon, the ſamin is null, and aucht and ſould be reducit. 2 *Feb.* 1563, Mark Kintoir *contra Schiref of* Air, *and* Alexander Kennedie, 1 *t. c.* 811.

C. XIX. Of a general libel.

ANE libel beand ſa general that na concluſioun or ſentence may be gevin ſpeciallie thairupon, is inept and irrelevant; becauſe *omnis ſententia debet eſſe certa.* And na ſpecial ſentence may be gevin upon ane general libel. 6 *Julij*, 1518, *M.* Johne Moncreif *contra* Andro Rettray. 15 *Julij*, 1533, 1 *t. c.* 627.

C. XX.

LIBEL in criminal cauſis, contening that the partie complenit on is art and part of the crime, may not be elided be exceptioun, *Ja.* VI. *fol.* 127. *c.* 151. 6 *Junij*, 1592.

Anent warrandice.

C. I. For quhat cauſe ane man may call his warrand.

THE ordour of proces ſumtime requiris the defendaris preſence alanerlie, and ſumtime the preſence of ane uther with him, to defend and mak anſwer in the cauſe, *viz.* quhen the defendar alledgis in judgment that the thing clamit fra him is not his, bot that he has the ſamin in his poſſeſſioun be reſſoun that it is lent to him be ane uther perſoun, or gevin to him in keiping, or lettin in hyre to him be ane uther perſoun, or laid in wad to him, or ſauld to him, or ony uther wayis cum in his poſſeſſioun, upon his coiſt and expenſis; or gif he alledge that the thing clamit fra him is his awin gudis and geir, and that thair is ane perſoun quha aucht and ſould warrand him the ſamin; the quhilk gif he alledgis, ane competent day ſall be aſſignit be the Judge to him to call his warrand thairanent; and at the ſame time he ſall find ſufficient pledgis to enter the thing clamit and challengit fra him in court; and gif he findis na borgh to that effect, his bodie ſall be attachit, togidder with the thing challengit, until the day of compeirance of his warrand, *Lib.* 1. *c.* 19. *Item*, Gif he quha is infeft be ane uther in ony landis or tenementis, be chartour and infeftment, contenand warrandice, or of the law importand the ſamin, is callit and convenit in judgment for the ſamin landis or tenementis be ony uther perſoun, he may call him be quhom he was infeft, or his airis, to warrand the ſaidis landis or tenementis to him and his airis. *Quon. attach. c.* 31.

C. II. Quha may be callit for warrandice.

INPRIMIS, Gif ony man gevis landis and tenementis, or ony uther thing, to ane uther, for ſervice done or to be done, he thairby of the law is bund and obliſt to warrand the ſamin, *Lib.* 2. *c.*

68. *De jud. c.* 165. *Item*, He that ſellis ony gudis, movabill or immovabill, to ane uther, efter he deceis, his airis and ſucceſſouris of the law ar haldin and obliſt to warrand the ſamin to the uther and his airis. *Item*, Gif ony thing be challengit fra the buyar for ony theftuous cauſe, he is haldin to defend himſelf fra all thift, or to call his warrand of the ſaid thing, *Lib.* 3. *c.* 9. 10. *Stat. Will. c.* 1. *Item*, Gif ony perſoun be callit and perſewit for landis be the breve of mortanceſtrie, he may of the law call his warrand thairanent, and ſould have ane delay aſſignit to him to that effect, gif he ſchawis ony reſſoun or titill quhy he ſould do the ſamin, *Lib.* 4. *c.* 25. And gif the warrand compeiris and ſchawis ane reſſonabill cauſe quhy he ſould not warrand the ſaidis landis, and is thairfoir aſſoilzeit in the cauſe of warrandice, the defendar quha callit the ſaid warrand may nevertheles uſe his defences in the principal cauſe, and object aganis the perſounis that ar ſummoundit to pas upon the aſſiſe. *De jud. c.* 100.

C. III. He quha annalzies ony thing, ſould warrand.

GIF ony man ſellis landis to ane uther, with warrandice, and the ſaid landis, or ony part thairof, be evict fra him be ane uther, or he be utherwayis troublit thairanent, ſwa that he may not bruik thame be the richt and titill maid to him be the annalzier thairof; thairfoir the ſaid annalzier ſould be decernit to warrand the ſamin to him or to give him als mekle land, haldin als weill, and als profitabill be zeir, and als commodious in all uther thingis, 7 *Martij*, 1533. And gif queſtioun and contraverſie be movit concerning the commoditie of the ſaidis landis, gif the ane of thame be als proffitabill as the uther, or not? the probatioun thairof ſould be gevin and grantit to him quha is callit and perſewit for warrandice of the ſamin landis, 20 *Jan.* 1560, Laurence Hamiltoun *contra M.* Robert Richardſone. And gif ony man ſells landis fré fra peril of inundatioun and ſpait of watteris, and fré fra all annuellis, and thairefter beand decernit to warrand the ſamin, or als mekle als gude as ſaid is, offeris uther landis lyand neir to ane water-ſyde, and ſubject to perrel of inundatiounis, or zit obliſt to pay ony annuellis, the ſamin landis ar not als gude as the uther. 13 *Feb.* 1553, Hamiltoun *contra* Millar, 1 *t. c.* 1166.

C. IV. *Titulus oneroſus* importis warrandice.

ALIENATIOUN of landis beand maid to ony man *titulo oneroſo*, the airis and ſucceſſouris of the maker thairof ſould warrand the ſamin, quhidder thay be minoris, and of les age, or not, 24 *Jan.* 1534, Gavin Hamiltoun *contra* Robert Maxwell *and his tutoris*, 1 *t. c.* 464. albeit na general nor ſpecial clauſe of warrandice be contenit in the ſaid alienatioun; for in this cais the annalzier, or his air, is bund and obliſt *ipſo jure*, to warrand, acquit and defend the ſaid alienatioun. 18 *Mart.* 1562, Criſtian Wod *contra Erle of* Rothes, 2 *t. c.* 295.

C. V. Anent warrandice of ward, releif, and non-entres.

GIF ony man ſellis or annalzies landis heritablie, or ſettis the ſamin in tak and aſſedatioun to ane uther, *titulo oneroſo*, or with general clauſe of warrandice alanerlie, he may not be compellit to warrand the ſamin fra ward, releif or non-entres; becauſe na perſoun may be callit and convenit for warrandice of ony landis annalzeit and diſponit be him, fra ward, releif or non-entres, except he

he be ſpeciallie and expreſſie bund and obliſt thairto; becauſe ward, relief, and non-entres pertenis to the ſuperiour be the commoun law of this realme, fra the quhilk na man is exemit, and ſould be knawin to all our ſoverane Lordis liegis; and thairfoir the uther ſould imput it to himſelf, gif he, not makand ſpecial proviſioun heiranent, incurris ony ſkaith throw his awin negligence and inexcuſabill ignorance. 28 *Maij*, 1549, *L.* Drummound *contra* Robert Steuart. 2 *Decemb.* 1552, Sinclair *contra* Alexander Hamiltoun, 2 *t. c.* 245.

C. VI. Anent the general clauſe of warrandice.

GIF infeftment, alienatioun or diſpoſitioun be maid with particular clauſis of warrandice, fra wardis, releifis, and non-entres, and fra ſic uther ſpecial caiſſis that may follow, togidder with ane general clauſe of warrandice, fra all uther thingis that may ſtop or mak impediment to him, to quhom the ſaid infeftment is maid, to bruik peciablie the ſaidis landis at his pleaſour; gif thair be ony ſic thing as takkis or liferentis not contenit expreſſie amang the ſaidis ſpecialities of warrandice, na actioun of warrandice thairanent ſould be gevin, notwithſtanding the general clauſe foirſaid. 14 *Mart.* 1563, Laurence Simpſon *contra* Johne Zoung, 2 *t. c.* 397.

C VII. *Titulus lucrativus* inducis na warrandice.

ANE infeftment, alienatioun or uther diſpoſitioun, maid *titulo lucrativo*, importis nor inducis na warrandice aganis the airis or ſucceſſouris of him quha maid the ſamin, albeit the ſamin be maid with the commoun and general clauſe of warrandice; becauſe ſic general clauſe hes na ſtrenth nor effect in alienatiounis nor infeftmentis maid *titulo lucrativo*. 18 *Mart.* 1562, Criſtian Wod *contra Erle of* Rothes, 2 *t. c.* 294.

C. VIII. Of warrandice gevin be reſſoun of evidentis that ar brint or tint.

GIF the defendar quha callis ony perſoun for his warrand, hes in time of weir, or be ony chance, tint his chartour, evident, or titill, and thairfoir may not in judgment ſchaw ony titill or cauſe quhy he that is callit as warrand ſould be decernit to do the ſamin; gif the ſaid defendar alledgis in his libel or clame that he had the chartour and titill contenand and importand warrandice of the thing clamit fra him, gevin to him or his predeceſſouris be him quhom he callis as warrand, or be his predeceſſour; the quhilk chartour was ſene and heard be divers perſounis, and thairefter is brint, or tint be thame, without fraud or guyle; it is leaſum to him in this cais to preive the ſamin be ane gude and leill aſſiſe, be leil and trew witneſſis, quha red, ſaw and underſtuid the tenour and contentis thairof: And gif it be fund of veritie, as is alledgit be the defendar, he quha is callit for to warrand ſall be decernit to do the ſamin; for utherwayis many perſounis ſould tyne thair landis and tenementis aganis the law and equitie, be reſſoun of thair evidentis or titillis tint, without fraud or diſſait committit be thame. *Quon. attach. c.* 31.

C. IX. Warrandice of tak and aſſedatioun.

GIF ony perſoun ſettis or gevis to ane uther, tak and aſſedatioun of ony landis or uther thing, and it happin the ſaid tak to be evictit, reducit, or annullit be ony uther thrid perſoun havand interes thairto, the gevar and ſettar of the ſaid tak aucht and ſould warrand the ſamin to him to quhom he ſet the ſamin, of als mekle landis, als gude, lyand in als competent a place, for all termis zit to rin, contenit

tenit in the ſaid tak and aſſedatioun, 6 *Feb.* 1488, Thomas Boſwell *contra* Alexander Gokburne *of* Ormeſtoun, 1 *t. c.* 58. Gif ony man ſet ane tak and aſſedatioun of ony landis to ane uther, not keipand all the ſolempnities requirit be the law thairanent, and zit reſſavis gude deid or ſowmis of money thairfoir, and efterwart he be callit to warrand the ſaid tak, and beis aſſoilzeit be decrete of the Judge thairfra, decernand him not to be haldin to warrand the ſamin; becauſe the ſamin wantis the ſolempnities of the law requirit thairto: In that cais he aucht and ſould reſtoir the ſowme of money, or gude deid reſſavit be him as ſaid is, becauſe he may not warrand and defend the ſaid aſſedatioun be the law, 23 *Junij*, 1517, Jonet Maxwell *contra the Abbot of* Paiſley, 1 *t. c.* 381. *Item*, Ane tak or aſſedatioun beand ſet and gevin to ony man, gif he, efter the dait thairof, reſſavis ane uther tak of the ſamin landis, divers and diſcrepant fra the firſt, ather fra him quha gave the firſt tak, or fra ony uther perſoun havand powar to give the ſamin, and is in poſſeſſioun of the ſamin landis be virtue of the ſamin ſecund tak, he hes na actioun of warrandice aganis the ſetter of the firſt tak; becauſe he takand and reſſavand the ſecund tak, and being in poſſeſſioun be reſſoun thairof, is underſtuid in effect to have paſt fra the firſt tak, 16 *Mart.* 1563, Johne Trotter *contra* Edward Home, 1 *t. c.* 819. *Item*, He that is warnit to flit and remove fra ony landis, alledgeand him to have tak and aſſedatioun thairof to rin, and thairfoir deſyris a day to call his warrand, the ſamin ſould on na wayis be gevin or grantit to him, gif he hes obtenit the ſamin efter the time of the ſaid warning. *Ult. Junij*, 1574, Johne Broun *contra the ſpouſe of* Robert Hoppringle, 2 *t. c.* 366.

C. X. Diſpoſitioun maid for love and favour, inducis na warrandice.

ANE chartour, obligatioun, aſſedatioun, or ony uther gift or diſpoſitioun of landis, or ſowmis of money, or uther debtis or dewties, maid be ony man to ane uther for favour, kyndlie love and affectioun, without mentioun of ony uther cauſe, is not underſtuid to be maid *titulo oneroſo*; and thairfoir, be the law and conſuetude of this realme, na warrandice followis thairupon. 27 *April.* 1513, Andro Lindſay *of* Balgonie *contra* Elizabeth Creichtoun, 1 *t. c.* 176.

C. XI. It is leaſum to call a warrand in actiounis of doubil avail of mariage.

ANE beand callit and perſewit for the ſingil and doubil avail of his mariage, may leaſumlie call ony perſoun for his warrand, quha is bund and obliſt to warrand him thairanent. 20 *Mart.* 1537, 1 *t. c.* 1032.

C. XII. He quha compeiris in ane actioun of ſpuilzie, for his interes, may call his warrand.

IN actioun of ſpuilzie, or of wrangous intromiſſioun with teindis, intentit and perſewit be ony man, aganis the tenentis and occupyaris of the ground, gif ony perſoun beand takiſman of the ſaidis teindis compeiris and is admittit for his interes, he may ask and obtene a day to call the maker of the tak and aſſedatioun to him, for his warrand, and in the mean time the principal actioun ſall ceis, until the cauſe of warrandice be diſcuſſit. 18 *Maij*, 1574, Cuninghame *contra parochineris of* Carluke, 2 *t. c.* 359.

C. XIII. In actioun of ſpuilzie, the

GIF ony perſoun beand callit and perſewit for ſpuilzie, or wrangous intromiſſioun with ony cornis, gudis or geir, grant and confes that

that he intromettit thairwith, and alledgis that he bocht thame *bona fide*, fra ane uther perſoun, he aucht and ſould have ane day to call his warrand thairanent, gif he deſyris the ſamin, and ſchawis the ſamin in writ, 9 *Jan.* 1505, Helene Schaw *contra* Henrie Haitlie, 1 *t. c.* 227. *Item*, Gif ony perſoun be callit and perſewit for wrangous, violent and maiſterful ſpoliatioun of ony gudis and geir, and alledgis him to have ane warrand, deſyrand ane day to be aſſignit to him for calling of the ſamin, he on na wayis aucht or ſould be heard or admittit thairintil; becauſe, of the law of this realme, ſpuilzie nor wrang ſould have na warrand. 4 *Julij*, 1515, *Laird of* Pittedie *contra the Lord* Glamis, 1 *t. c.* 369.

defendar alledgeand a titil *ad bonam fidem*, may call his warrand.

C. XIV. Warrand in actiounis of ejectioun.

GIF ane beand perſewit for ejectioun, alledgis and producis ane obligatioun quhairin ane uther is expreſlie bund and obliſt to warrand him thairanent, and deſyris a day to be aſſignit to him for calling of his warrand, the ſamin on na wayis ſould be grantit unto him, nor zit ſould ſtay the principal actioun and cauſe; becauſe the ſamin is of wrang and ſpuilzie: Bot zit actioun ſould be reſervit to him to call his warrand in time and place opportune, 22 *Mart.* 1545, *M.* James Kinninmouth *contra* James Williamſon, 1 *t. c.* 616. *Item*, Quhen ony man is in poſſeſſioun be vertue of ane titil, as be ane aſſedatioun contenand termis to rin, gif he be callit and perſewit be ony uther for wrangous and violent occupatioun of the landis, gudis or geir occupyit or poſſeſſit be him, he may, ſchawand ony richt or titil, ask and obtene ane day to call his warrand thairanent; becauſe, albeit wrang ſould have na warrand, zit it is not knawin gif his poſſeſſioun be wrangous and violent, or not: And it may be that the perſoun quhom he deſyris to call as his warrand, hes ane juſt and lauchful defence in the cauſe; as gif ony man havand tak and aſſedatioun of teindis for termis to rin, be callit for ſpuilzie, he may call the maker of the aſſedatioun for his warrand thairanent, 13 *Mart.* 1541, *Sir* Johne Greenlaw *contra* James Lauſon *of* Humbie, 1 *t. c.* 76. Attour, gif ony man is callit and perſewit for wrangous intromiſſioun with ony gudis or geir, and alledgis that he tuke or intromettit with the ſame as Officiar or Serjand to ane uther, and thairfoir ſeikis a day to call his warrand, the ſamin aucht and ſould be grantit to him, 21 *Feb.* 1504, George Leſlie *contra* Alexander Lyndſay, 1 *t. c.* 212.

C. XV. Gude deidis inducis warrandice.

ALL alienatiounis and diſpoſitiounis maid be ony man for gratitude, pleaſour, or gude deid, importis and inducis warrandice, as gif the ſame had bene maid *titulo oneroſo*, albeit the ſamin contene not ſpeciallie the ſowmis of money, ſervice or gude deid gevin and done thairfoir, 19 *Julij*, 1555, *Sir* Robert Carnegie *contra* Alexander Lindſay, 2 *t. c.* 257. *Item*, Gif ony man gevis his kindnes of ony landis to ane uther, and reſſavis gude deid and proffeit thairfoir, he may be callit and decernit to warrand the ſamin landis, 23 *April.* 1554, Foultoun *contra* Mure. Bot he may not be callit for warrandice, gif he overgevis and renuncis his kindnes, and reſſavis na gude deid thairfoir. 14 *Novemb.* 1555, Roger Gordoun *contra Ladie* Partan, 2 *t. c.* 251.

C. XVI. Anent landis gevin in clauſe of warrandice.

GIF ony man ſellis and annalzies landis to ane uther, and in clauſe

clauſe of warrandice thairof infeftis him in landis, and it happin the principal landis annalzeit to fall in ward, non-entres, or ony uther ſtait and conditioun, ſwa that the buyar may not bruik and joiſe the ſamin be the richt and titil maid to him be the ſellar thairof, he hes juſt actioun, richt and titill to call for the ſaid landis in the quhilk he was infeft in clauſe of warrandice; bot nevertheles he aucht not nor ſould not have the haill profitis quhilk the ſaidis landis micht give, or wald have gevin, bot onlie ſa mekle as thay gave in tak and aſſedatioun zeirlie of befoir. 17 *April.* 1555, *The Biſchop of* Murray *contra Mr.* Johne Hay, 1 *t. c.* 744.

C. XVII. Anent warrand in actiounis of ward and non-entres.

ITEM, Gif ony perſoun be callit to heir and ſé landis decernit to be in non-entres, or, efter that thay ar decernit to be in non-entres, he be callit to heir and ſé himſelf decernit to flit and remove thairfra; and he, be virtue of ony obligatioun of warrandice maid to him of the ſaidis landis, deſyre a day and term, be virtue of the ſaid obligatioun, to call ony perſoun for his warrand, the Judge aucht and ſould reſerve him his warrandice and actioun thairof; becauſe in actiounis or materis of ward and non-entres, the principal cauſe ſould not be ſtayit for calling of a warrand, 4 *Martij*, 1567, *Laird of* Bathyok *contra* William Chalmer. 9 *Martij*, 1569, Johne Logane *of* Coitfeild *contra Laird of* Reſtalrig, 1 *t. c.* 860. *Item*, In ony cauſe or actioun of non-entres na day ſould be gevin for calling of ane warrand, or ſtopping or delaying of the principal cauſe, bot actioun ſould be reſervit for calling of the warrand upon xxi. dayis warning, but diet or tabill, 6 *Maij*, 1569, Hew Wallace *contra Sir* William Hamiltoun. 24 *Martij*, 1573, *Conſtable of* Dundie *contra N.* 2 *t. c.* 334. *Item*, Gif the landis fall in ward, the tenentis quha hes takkis thairof for certane zeiris or termis to rin, being callit and perſewit be the wardatour to flit and remove, ſould not have ane day to call the air for thair warrand, bot hes actioun of warrandice aganis him quhen he is of perfeit age; bot gif ony tenent hes takkis during his lifetime, he aucht and ſould have ane day to call the air for his warrand, and ſould not be delayit until the air cum to perfeit age, 16 *Decemb.* 1569, 2 *t. c.* 336. *Item*, Quhen ony tenent or poſſeſſour of landis, havand tak and aſſedatioum thairof, is ſtopt be reſſoun of ward and non-entres, to bruik his tak maid to him befoir the ward and non-entres, be the Lord of the ground; the ſaid Lord and his airis is bund and obliſt to thole him to bruik, and to keip to him als mony zeiris takkis of the ſamin landis, efter the iſche of the ward or non-entres, as wer to rin of the tak, quhen the ſaid ward or non-entres began. And albeit the tenent compone and agré with the ſuperiour for tak and aſſedatioun of the ſaidis landis, induring the time of the ward, nevertheles he hes juſt actioun of warrandice aganis the ſettar of the ſaid tak, or his airis, in maner abone ſpecifyit; becauſe he bruikit not the landis be virtue of the ſaid tak, bot be the richt of ward. 28 *Maij*, 1540, *The Laird of* Dunnoon *contra* Robert Stewart, 2 *t. c.* 214.

XVIII. Anent warrandice of landis come under foirfaulture.

GIF ony perſoun havand, be diſpoſitioun maid to him be the King, landis cum in his Hienes handis be reſſoun of foirfaultour of the heritabill poſſeſſour thairof, ſellis or annalzies the ſamin, or ony part thairof, to ony man, and it happin the dome of foirfaltour

faltour to be reducit, and the perſoun foirfaultit, or his air, to be reſtorit *in integrum* to his landis and heritage, the ſaid buyar of the landis hes na actioun of warrandice aganis the annalzier, bot alanerlie for the ſowmis of money gevin for the ſaidis landis. 21 *Junij*, 1564, *Sir* James Hamiltoun *contra the Lord* Somerville, 2 *t. c.* 298.

C. XIX Anent warrandice in actioun of removing.

GIF ony man callit for contraventioun of ane decrete of removing, producis ane obligatioun, quhairin ane is obliſt to ſet the ſamin landis in tak and aſſedatioun to him quha is decernit to remove, or to ony of his predeceſſouris, and he, be reſſoun thairof, deſyris a day to call him for his warrand; na day nor term ſould be aſſignit to him to that effect, bot the ſame ſould be reſervit to him be way of actioun, as accordis of the law; becauſe the executioun of the ſaid decrete ſould not be ſtopt or delayit be calling of ony warrand. 19 *Jan.* 1562, Iſobel Bonar, *and* Alexander Blair *of* Balgray, *contra* Elizabeth Seytoun, 1 *t. c.* 1274.

C. XX. Warrandice in actiounis of redemptioun.

IN ane actioun of redemptioun, intentit and perſewit for making and delivering of a reverſioun for redemptioun of landis, na day nor term ſould be aſſignit to the defendar for calling of his warrand, to ſtop or delay the principal cauſe thairby, bot the ſamin aucht and ſould be reſervit to him as law will, *Pen. Julij*, 1574, *Laird of* Luſs *contra L.* Drumquhaſſil, 2 *t. c.* 364. *Item*, Gif ane annalzie landis to ane uther under reverſioun, contenand ane certane ſowme of money, and thairefter ony perſoun buy the ſamin landis fra him to quhom thay wer wodſet, gevand him ane greater ſowme thairfoir nor is contenit in the reverſioun; it is leaſum to the firſt annalzier to redeme the ſaidis landis fra the ſecund buyar, with the ſowme contenit in the reverſioun: And gif the ſecund buyar deſyris a day to call the firſt buyar for his warrand, be reſſoun of the alienatioun maid to him as ſaid is, the ſamin ſould not be grantit to him, becauſe in the redemptioun of landis na term ſould be gevin for calling of ane warrand. 8 *Martij*, 1541, George Patoun *contra* Marion Ogilvie, 2 *t. c.* 73.

C. XXI. At quhat time ane ſould deſyre to call his warrand.

GIF ane perſoun callit and perſewit in ony actioun, wald call his warrand thairanent, he aucht and ſould deſyre a day to that effect in the begining of the cauſe, or at leaſt befoir he propone ony peremptour exceptioun; for thairefter na term nor delay ſould be grantit nor gevin to him for calling of ony warrand in that cauſe, 11 *Feb.* 1540, Heriot *contra Mr.* William Arthour. Nor zit efterwart may he call him be way of actioun. 15 *Mart.* 1540, Robert Lumiſdane *contra Erle of* Rothes, 2 *t. c.* 16.

C. XXII. He quha deſyris ane warrand ſould inſtantlie ſchaw the cauſe.

HE quha deſyris ane day to be aſſignit to him to call ony perſoun for his warrand in ony actioun or cauſe, ſould inſtantlie in judgment ſchaw ane reſſonabill cauſe and titil quhy he dois the ſamin, *De jud. c.* 155. Becauſe gif ane air of les age be callit be ony perſoun for warrandice of ony thing done be his predeceſſour, to quhom he is air, he quha callis him ſould ſchaw, in the firſt day of compeirance befoir the Judge, ſum evident, chartour, infeftment, or ſum uther ſufficient titil maid to him or his predeceſſouris, be reſſoun of the quhilk the ſaid minor, as air to his predeceſſour, is bund and obliſt

to

to warrand him thairanent; the quhilk gif he failzies to ſchaw the ſaid firſt day, he nor his airis efterwart ſall never be heard to call for warrandice of the ſamin, *Stat. Will. c.* 25. *Leg. burg. c.* 151. *Item*, Gif he that is callit as warrand compeiris and denyis that he ſould warrand the thing for the quhilk he is callit, and it happin that he quha hes callit him ſchawis not nor preivis not ane reſſonabill cauſe quhairfoir the uther aucht and ſould be decernit to warrand him that thing clamit; it ſall not be leaſum to him in ony time cuming to call and perſew the ſaid perſoun, as warrand for the thing acclamit. *De jud. c.* 107.

C. XXIII. A chartour without a ſaſine is ſufficient to call a warrand.

GIF ony perſoun, perſewit in ony actioun and cauſe of heritage and landis, producis in judgment ony chartour of the ſamin, maid to him be ony man *titulo oneroſo*, or utherwayis, with clauſe of warrandice, he aucht and ſould have a day to call the maker thairof, or his airis, for his warrand, albeit he produce na ſaſine paſt upon the ſaid chartour. 6 *Mart.* 1550, 1 *t. c.* 1131.

C. XXIV. Of him quha neglectis to call his warrand.

GIF the partie defendar, perſewit in ony actioun or cauſe, pretermittis the calling of his warrand in dew time, and anſweris *ſimpliciter* to the clame and petitioun of the perſewar, and thairthrow, in his awin default, tynes the landis, or ony uther thing clamit fra him, he may never in ony time thairefter intent or propone actioun of warrandice of the ſamin landis, or uther thing, aganis him, quhom in dew time he micht have callit of befoir for his warrand, and neglectit to do the ſamin, *Lib.* 4. *c.* 24. *De jud. c.* 101. *Item*, Ane man havand landis of ane uther pertening to him *titulo oneroſo*, gif he tynes the ſamin throw his awin default, he hes na actioun of warrandice aganis him fra quhom he coft the ſamin. 12 *Martij*, 1506, Johne Oliphant *contra the Lord* Oliphant, 1 *t. c.* 256.

C. XXV. Of a warrand compeirand in judgment.

THE day beand cum to the quhilk the warrand was callit, and he compeirand at the ſame time, grant the thing that is clamit to be his awin proper gudis and geir, then the defendar, quha wes callit and perſewit thairfoir, ſall be fré and quyte thairanent, and the pley ſall be in time cuming betwix the perſewar and him quha wes callit for warrand, *Lib.* 1. *c.* 18. And utherwayis, he quha is callit as warrand, gif he pleiſis, may uſe all lauchful defenſis and exceptiounis, als weill aganis the perſewar in the principal cauſe as contrare the defendar in the cauſe of warrandice, as accordis of the law. *De jud. c.* 158.

C. XXVI. Of a warrand not compeirand in judgment.

GIF he quha is callit lauchfullie as warrand compeiris not in judgment to warrand the thing that is debaitabill betwix the perſewar and defendar, nor zit to ſchaw ane reſſonabill cauſe quhy he ſould not do the ſamin, be reſſoun of his default and contumacie, he ſall be decernit at his inſtance quha callit and perſewit him for warrandice, to warrand him that quhilk is clamit fra him, or ellis als mekill als gude, of als greit valour and commoditie, *Lib.* 1. *c.* 18. *Item*, Gif ony perſoun callit for warrandice compeiris not, bot is *contumaciter* abſent, he may nevertheles be decernit to warrand, conform to the perſewaris petitioun, the perſewar ſchawand ane ſufficient

cauſe

cauſe quhairfoir he ſould be decernit to do the ſamin. 27 *April.* 154c, 2 *t. c.* 215.

C. XXVII. He quha is air be reſignatioun, may be callit for warrandice.

GIF ony man puttis his ſone, or ony uther richteous air, in the ſie of his landis, or ony part thairof, be reſignatioun of the ſamin in the ſuperiouris handis, in his favouris; efter the decels of the reſignant, he, in quhais favouris the ſamin reſignatioun is maid, may be callit as air to warrand ony deid, alienatioun, or uther thing done be the reſignant, in like maner as gif he had enterit to the ſaidis landis be breves of inqueiſt raiſit and impetrat furth of our ſoverane Lordis chapel be him to that effect. 28 *Jan.* 1505, James Nisbet *contra* George Wallace *of* Ellerſlie *Knicht*, 1 *t. c.* 234.

C. XXVIII. Ane appeirand air may be callit as warrand.

ANE appeirand air, not beand enterit as air to his predeceſſour, albeit he wald have enterit, and to that effect raiſit breves, and was ſervit be ane inqueiſt *negativè*, may be callit and perſewit, as air, to warrand ony deid or alienatioun maid and done be his predeceſſour. 16 *Novemb.* 1551, Johne Montgomrie *contra* Patrik Boyle, 1 *t. c.* 701.

C. XXIX. The airis of line ſould be firſt callit and diſcuſſit befoir the airis of tailzie.

THE airis of line aucht and ſould be firſt warnit and diſcuſſit, to warrand ony deid done be thair predeceſſour, befoir the airis of tailzie: And gif thay be ma in nombre, thay ſould be all warnit and ſummoundit to that effect; for nane of thame may be compellit to anſwer, except thay be all ſummoundit to defend in the cauſe, 15 *Julij*, 1560, *Laird of* Dalhouſie *contra Dame* Elizabeth Douglas, *and the Erle of* Mortoun *hir ſpouſe*, 1 *t. c.* 794. *Item*, In all actiounis of warrandice, intentit and perſewit aganis the airis of ony perſoun that is deceiſt, the airis of line aucht and ſould be firſt perſewit and diſcuſſit: And gif thay be not reſponſal in all, nor in part, the airis of tailzie may be callit and perſewit in ſupplement, in ſa far as the airis of line ar not reſponſal, and that at ane time, and in ane libel, 7 *Decemb.* 1549, *D.* Elizabeth Gray, *Ladie* Dudop, *contra the airis of line, and tailzie of the conſtable of* Dundie, 1 *t. c.* 1110. *Item*, In the actioun of warrandice, the air of line and the air of tailzie may baith be callit and perſewit at ane time, and in ane libel: Bot gif decrete of warrandice be pronuncit aganis thame, na executioun thairof ſould have place aganis the airis of tailzie, except the air of line be firſt diſcuſſit, and found to be *non ſolvendo*. 24 *Maij*, 1542, *Laird of* Innes *contra Erle of* Arran's *airis of line and tailzie*, 2 *t. c.* 98.

C. XXX. Anent him quha makis a ſpecial obligatioun of warrandice.

GIF ony man annalzies ony landis or movabill gudis to ane uther *titulo oneroſo*, and obliſſis him, gif the ſaidis landis or gudis be recoverit and evictit fra him be ony perſoun, to reſtoir and deliver the ſowmis of money, or gude deid reſſavit be him thairfoir; in cais the landis or gudis be evictit, he aucht and ſould refound and reſtoir all that he reſſavit thairfoir, conform to his obligatioun and promiſe, *quia pacta ſunt ſervanda, et legem contrahentibus præſcribunt*. 6 *Mart.* 1505, Patrik Barclay *of* Grantullie *contra* Johne Leſlie *of* Wardis, 1 *t. c.* 239.

C. XXXI. Anent him quha ſettis a

ANE liferenter may ſet ane tak and and aſſedatioun for ninetene zeiris,

ſpecial aſſedatioun.

zeiris, or for ſchorter termis, of landis or poſſeſſiounis pertening to him in liferent: And gif he obliſſis him and his airis to warrand the ſamin, efter his deceis his airis may be callit for warrandice thairof. 28 *Julij*, 16 *Decemb.* 1551, Alexander Liddel *contra* James Home. 1 *Feb.* 1558, Margaret Diſchingtoun *contra* Thomas Diſchingtoun, 2 *t. c.* 276.

C. XXXII. Anent the calling of a warrand of new come to the partie's knawledge.

GIF ane certane term be aſſignit be the Judge to the partie, to call ony perſoun for his warrand, and thairefter, and befoir the day at the quhilk the warrand ſould compeir, it happinis to cum to the partie's knawledge that thair is ane uther perſoun quha aucht and ſould warrand him in the cauſe; and that he quha is alreadie callit is not obliſt to warrand him, in reſpect he is not air nor ſucceſſour to him quha was firſt bund and obliſt for warrandice; the ſaid perſoun makand faith be his greit aith, that the ſaid laſt perſoun, quhom he deſyris to call for his warrand, is of new come to his knawledge, aucht and ſould have a day to charge that perſoun new come to his knawledge, upon fourtie dayis warning, to enter air to his father, or predeceſſour, gif he be not alreadie enterit, and twentie dayis efter the ſaid fourtie dayis to ſummound him to compeir for warrandice in the ſaid cauſe. 6 *Feb.* 1562, Robert Creichtoun *contra the airis of* Charterhouſe, 2 *t. c.* 289.

C. XXXIII. Of him that hes ſindrie warrandis.

GIF ony man hes divers and ſindrie perſounis obliſt to him conjunctlie and ſeverallie, for warrandice of ony landis, gudis or geir, it is leaſum to him to call thame all, or ony ane of thame, as he pleiſis, for his warrand. *De jud. c.* 90.

C. XXXIV. How far warrandis may call other warrandis.

GIF ony perſoun is perſewit in ony pley or cauſe, and callis ane uther for his warrand thairanent, the ſamin warrand compeirand may alſo call his warrand, gif he ony hes; and he compeirand as warrand, may in like maner call his warrand, gif he hes ony richt and titil to do the ſamin; and in the mene time the principal cauſe and actioun ſall ceis and ſleip, until the ſaidis actiounis aganis the thré warrandis be diſcuſſit and endit; becauſe it is leaſum to call thré warrandis in ony actioun and cauſe, ilk ane efter uther, as ſaid is; and the thrid warrand beand callit, may not proceid farder to the calling of the feird warrand; for the thrid warrand beand diſcuſſit, the principal cauſe ſould have furder proces. *Lib.* 1. *c.* 25. *Lib.* 3. *c.* 10. *Quon. attach. c.* 4. *Mod. ten. cur. c.* 13.

C. XXXV. The firſt warrand compeirand willinglie, not beand ſummoundit, ſould have a day to call his warrand.

GIF ane man beand callit and perſewit, deſyris and obtenis ane term for calling of his warrand, and at the time and day of compeirance, the perſoun quha ſould be callit for warrand willinglie compeiris and grantis him lauchfullie ſummoundit, and producis ane ſufficient titil aganis ony uther perſoun, deſyrand ane uther day to be aſſignit to him for calling of the ſecund warrand, the ſamin aucht and ſould be gevin and grantit to him: And gif the Judge dois utherwayis, and refuſis to aſſign ane day for the calling of the ſaid ſecund warrand, becauſe thair was na ſummoundis producit dewlie execute and indorſit aganis the firſt warrand, the proces and ſentence, with all that followis thairupon, is of nane avail, and

ſould

ſould be reducit. 12 *Mart.* 1567, Alexander Home *contra* William Home *and the Schiref of* Bervick, 1 *t. c.* 903.

C. XXXVI. The King may not be callit as warrand.

IT is not the uſe, law, nor conſuetude of this realme, that the King's Grace ſould warrand ony alienatioun, infeftment, gift, or diſpoſitioun maid be his Hienes to ony of his lieges, albeit the ſamin be maid *titulo oneroſo*, and he have reſſavit gude deid thairfoir, *Pen. Novemb.* 1527, 1 *t. c.* 335. *Item*, Albeit the King may not be compellit to warrand ony alienatioun, gift and diſpoſitioun maid be his Hienes and his predeceſſouris to ony man; zit nevertheles, gif the King callis and perſewis ony perſoun for reductioun of his infeftment, maid to him be ony man in ony uther cauſe, quhairin he may call ane perſoun for his warrand, it is leaſum to ony perſoun perſewit be the King in ony actioun, to call ony uther man for his warrand thairanent, albeit the King ſould warrand na man, as ſaid is. 18 *Julij*, 1542, *The King's Advocate* contra Patrik Home. 6 *Maij*, 1543, *The Quenis Advocate* contra Robert Dikſone, 2 *t. c.* 123.

C. XXXVII. A minor may be ſumtimes callit for warrand.

GIF ane minor, havand tutoris or curatouris, makis ony contract or obligatioun without thair conſent, and beand thairefter callit to warrand the ſamin, alledgeand that the ſamin is null, becauſe it was maid without the conſent of tutoris or curatouris, the ſamin exceptioun is not relevant; and thairfoir the contract and obligatioun ſtand and unreducit, the ſaid minor, maker thairof, may be compellit to warrand the ſamin; becauſe nullitie of ony writ or evident may not be proponit be way of exceptioun, 4 *Mart.* 1542, Walter Striviling *contra* James Striviling, 2 *t. c.* 138.

C. XXXVIII. Ane Kirkman ſould warrand the deid of his predeceſſour.

ANE Abbot or Kirkman ſould warrand all takkis and aſſedatiounis ſet be his predeceſſouris, like as the ſaid predeceſſour aucht and ſould have done, 11 *Mart.* 1562, George Richardſone *contra the Abbot of* Newbottle, 1 *t. c.* 1293. And ſiclike, all kirkmen and eccleſiaſtical perſounis aucht and ſould keip, warrand and defend all and ſindrie contractis, infeftmentis of few, alienatiounis, and uther obligatiounis quhatſumever, maid be thair predeceſſouris to ony perſoun beand in poſſeſſioun be vertue thairof, 25 *Junij*, 1541, *The Laird of* Duffus *contra the Biſchop and chaptour of* Murray, 2 *t. c.* 39. Attour, gif ony kirkman ſettis a tenement in few, *titulo oneroſo*, with expres conſent and aſſent of the Patroun, he aucht and ſould warrand the ſamin; bot the Patroun, or his ſucceſſouris, may not be callit in ony time cuming for warrandice thairof. 23 *Junij*, 1568, Meg Myles *contra M.* Hew Bonkerton, 1 *t. c.* 1356.

C. XXXIX. Anent the OEconomus of ane benefice.

ANE OEconomus and adminiſtrator of a benefice is not bund and obliſt to warrand ony tak or aſſedatioun ſet be him as OEconomus, bot onlie to reſtoir the profit, or gude deid, reſſavit be him for the ſamin, ſpeciallie gif he to quhom the ſaid tak was ſet knew him, the time of the ſet, to be OEconomus, quhais office micht expire quhen ony perſoun is provydit to the benefice, or ellis quhen he is diſchargit be him quha maid him OEconomus. 17 *Mart.* 1569, *The Ladie* Edmonſton *contra M.* Johne Spens, 2 *t. c.* 341.

GIF

C. XL. A Kirkman ſould not be callit as warrand, without his convent.

GIF ony man callis and perſewis ane Biſchop, or eccleſiaſtical perſoun, for warrandice of ony tak and aſſedatioun, maid and ſet to him and his predeceſſouris be the ſaid Biſchop or ſpiritual perſoun, with conſent of the chaptour or convent, he aucht and ſould call the chaptour to that effect, als weill as the Biſchop or eccleſiaſtical perſoun; becauſe the Biſchop, without the convent, is not bund nor obliſt to anſwer thairto. 11 *Mart.* 1544, Johne Carmichael *contra the Biſchop of* Glaſgow, 1 *t. c.* 594.

C. XLI. Warrandice of compryſit landis.

GIF ony man annalzies ony landis *titulo oneroſo*, to ane uther, and it happin efterwart that the ſamin landis be compryſit fra the buyar, for debt auchtand be the annalzier of the ſaidis landis to him be quhom thay ar compryſit, and to his aſſignay thairof, he aucht and ſould warrand the ſamin landis to the ſaid perſoun fra quhom thay were compryſit, and in like maner to his aſſignay, or thair airis, ſucceſſouris and aſſignayis, in the ſamin way as he ſould have warrandit and defendit the ſamin landis to him fra quhom thay ar compryſit, 26 *Feb.* 1511, Robert Menzies *contra* Andro *Lord* Gray, 1 *t. c.* 177. *Item*, Gif ony man havand lauchfullie compryſit and aſſignit landis to him, annalzie the ſamin thairefter to ane uther; and it happin him, fra quhom the landis wer compryſit, to redeme thame within ſevin zeiris, conform to the reverſioun of law; gif the buyar thairof knew, the time of the alienatioun thairof maid to him, that the ſamin was compryſit landis, he ſall have na actioun of warrandice aganis the annalzier for the valour of the ſaidis landis, nor zit for the ſilver quhilk he gave for the ſamin landis the time of the alienatioun, bot onlie for the ſowmis of money for the quhilk the ſaidis landis wer compryſit, 8 *Feb.* 1566, Robert Ferquhar *contra S.* William Hamiltoun, 1 *t. c.* 1347. *Item*, Gif landis be compryſit be ony perſoun, he fra quhom thay war compryſit, and his airis, aucht and ſould warrand the ſamin to him to quhom thay ar compryſit, and his airis; thairfoir gif ony thrid perſoun callis and perſewis for redemptioun of the ſamin landis, be virtue of ane reverſioun maid to him or his predeceſſouris, he fra quhom the ſaidis landis wer compryſit ſould warrand the ſamin, as ſaid is, and ſould have the ſilver and money for redemptioun of the ſaidis landis, conform to the reverſioun; except it pleiſe him, of his awin fré will, fra quhom thay ar redemit, to reſſave the ſaid money, and renunce and diſcharge the ſaid actioun of warrandice. 24 *April.* 1559, William Rutherfurd *contra Erle* Bothwell, 2 *t. c.* 279.

C. XLII. Warrandice of recognoſcit landis.

LANDIS beand recognoſcit be the ſuperiour, for alienatioun thairof maid be ony perſoun quha is deceiſt befoir the dome of recognitioun, the air and ſucceſſour of the annalzier, quhidder he be of les age, and minor, or not, aucht and ſould warrand the ſaidis landis to him fra quhom thay ar recognoſcit. 21 *Jan.* 1505, John Gilchriſone *contra* John Blair *and his tutoris*, 1 *t. c.* 233.

C. XLIII. Of the warrand that deceiſſis in time of the pley.

GIF he quha is callit in ony actioun or cauſe, happin to deceis befoir the cauſe of warrandice be diſcuſſit and endit, the ſamin cauſe ceiſſis be reſſoun of the deceis: And it is leaſum to him quha callit the perſoun deceiſt to rais new ſummoundis aganis his air and ſucceſſour, for warrandice, to warrand him the ſaid thing for the quhilk

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the defunct was callit and perſewit, *De jud. c.* 90. Ane man beand perſewit at the inſtance of ony partie, deſyrand ane day to call his warrand, and the ſamin day beand grantit to him, gif the perſoun quhom he callis for his warrand happinis to deceis, ſummouhdis beand raiſit, lauchfullie execute and indorſit aganis him, the ſaid partie defendar, caller of the warrand, ſall have ane lang day to call the air of the defunct, albeit he be minor, to wit fourtie dayis, to charge the ſaid air to enter according to the act of parliament, and thairefter twentie ane dayis for ſummounding of him, togidder with ſa mony ma dayis for libelling and executioun of the ſummoundis, as ſall be thocht expedient be the Judge, according to the circumſtance of the matter. 8 *Junij*, 1563, Patrik Pollok *contra Commendatar of* Coldinghame, 1 *t. c.* 1373.

C. XLIV. Anent the warrandice of blanche and of ward landis.

WARD landis beand ſauld and annalzeit be ony man *titulo oneroſo*, or with clauſe of warrandice, quha thairefter happinis to deceis, the actioun of warrandice of the ſamin landis may not be intentit and perſewit aganis his air, beand minor, and in ward, until the time of the ward be expyrit, and the air be cum to perfyte age, at the quhilk time the air may be callit for warrandice of the ſamin landis, for all the zeiris and termis that the ſamin has bene in ward or non-entres, 9 *Mart.* 1569, Johne Logane *of* Coitfield *contra the Laird of* Reſtalrig's *airis*. Bot ane air of blanche landis beand minor, or of les age, may be callit to warrand alienatiounis, contractis, or uther deidis made or done be his predeceſſour. 24 *Maij*, 1542, *Laird of* Innes *contra Erle of* Errol's *dochter*, 1 *t. c.* 915.

C. XLV. Of him quha is decernit to warrand.

GIF he quha is callit as warrand in ony actioun or cauſe is decernit to do the ſamin be decrete of the Judge, the defendar, quha callit him to warrand him, may not thairefter loſe or tyne the thing clamit fra him; for albeit the perſewar obtene and evict the ſamin fra him quha was decernit to warrand the ſamin, zit he ſould give him als mekil and als gude thairfoir, gif he hes ought quhairwith he may do the ſamin, *Lib.* 1. *c.* 10. *Item*, Ane decrete of warrandice beand gevin and pronuncit aganis ony perſoun, he ſould be admittit, gif he deſyris the ſamin, to concur, aſſiſt, and uſe defenſis in the principal matter with the defendar, in the ſamin ſtate that the cauſe is into at that time. 22 *Novemb.* 1533, 1 *t. c.* 944.

C. XLVI. He quha wittinglie buyis ane uther manis gudis and geir, hes na actioun of warrandice thairfoir aganis the ſellar.

GIF ony perſoun makis, gevis or grantis ony infeftment, obligatioun or aſſedatioun of ony landis to ony uther, or ſellis to him ony gudis or geir, and the buyar, at the time of the making of the obligatioun, or ſelling, knew ſurelie and perfectlie that the ſaidis landis wer in non-entres, ward, or utherwayis, pertenit to ony uther man than the ſellar, or that the ſaidis gudis or geir wer not the proper gudis of the ſellar; the buyar, nor his ſucceſſouris, hes na actioun of warrandice aganis the ſellar thairanent, *quia ſcienter rem alienam emit*; except at the time of the making of the ſaid alienatioun, or thairefter, ony pactioun or promiſe be maid be the annalzier in the contract, the quhilk ſould not be provin be witneſſis, bot be writ. 9 *Feb.* 1553, Alexander Sinclare *contra* Agnes Hepburne. 18 *Novemb.* 1564, William Wauchop *cohtra* Alexander Stevenſon. 7 *Junij*,

nij, 1565, Thomas Merſchell *contra* Henrie Merſchell. 8 *Mart.* 1569, *M.* David Macgill *contra M.* James Creichtoun, 1 *t.* c. 719.

C. XLVII. Anent him quha is interdytit and callit for warrand.

GIF ony man beand callit to warrand landis annalzeit be him *titulo oneroſo*, to ane uther, alledgeand to preve, be way of exceptioun, that at the time of the making of the alienatioun, and of befoir, he was interdytit in the preſence of ane ordinar Judge, fra all maner of alienatioun of ony landis, without conſent of certane perſounis, quha conſentit not to the ſaid alienatioun, and that the ſamin was manifeſtlie knawin to the perſewar; he aucht and ſould on na ways be compellit or decernit to warrand the ſaid alienatioun, the ſamin beand null in the ſelf, for the reſſoun foirſaid. 1 *April.* 1559, Mathou Steuart *contra the Laird of* Barnbougal, 2 *t.* c. 78.

C. XLVIII. GIF the King gevis infeftment or ony diſpoſitioun of landis to *Titius*, and *Titius* annalzies and diſponis the ſamin to *Sempronius*, and thairefter the King, or his ſucceſſouris, callis and perſewis baith *Titius* and *Sempronius* for reductioun of the ſaidis infeftmentis, *Sempronius* deſyrand a day to call *Titius* for warrandice of the ſaid infeftment or diſpoſitioun maid to him, the ſamin ſould be gevin unto him; becauſe albeit *Titius* was principallie callit in the principal cauſe, and ſwa knew perfectlie the intenting and depending of the pley, nochttheles the ſamin ſould not prejudge *Sempronius* in the cauſe of warrandice, in the quhilk *Titius* ſould not be compellit to anſwer, except he be ſpeciallie and ordourlie warnit thairto. 6 *Maij*, 1543, *The Quenis Advocate* contra Robert Gib *of* Goukhill, 2 *t.* c. 142.

C. XLIX. GIF ony man ſellis and annalzies landis to ane uther *titulo oneroſo*, heritabillie, without ony reverſioun, and thairefter convenis and agries with the ſaid uther for ane reverſioun, and obtenis the ſamin to him, his airis and aſſignayis, for redemptioun of the ſamin landis; and efter the obtening thairof, he makis ane aſſignay to the ſamin reverſioun, the quhilk aſſignay, be vertue of his aſſignatioun, redemis the landis fra the firſt buyar thairof, and bruikis and joiſis the ſamin be ane certane ſpace; gif the firſt buyar, fra quhom the ſaidis landis ar redemit, buy the ſamin landis agane fra him quha as aſſignay redemit the ſamin, he has na actioun of warrandice aganis him fra quhom he firſt bocht the ſamin *titulo oneroſo*. 9 *Mart.* 1541. 19 *Decemb.* 1541, Margaret Kennedie *contra* David Hamiltoun, 1 *t.* *c.* 523.

C. L. Anent warrandice of landis annalzeit, and thairefter ſauld agane to the annalzier.

LANDIS beand annalzeit to ony perſoun *titulo oneroſo*, and, eſter the alienatioun, beand reſignit be the buyar, or his airis, in the ſuperiouris handis, in favouris of the annalzier, or in the annalzier's handis, *ad perpetuam remanentiam*, or utherwayis; he that firſt annalzeit the ſamin is na wayis bund nor obliſt to warrand thame to him, nor to his airis, to quhom thay war annalzeit. 27 *April.* 1559, Gilbert Wauchop *contra Abbot of* Haliruidhous, 1 *t.* *c.* 1229.

C. LI. Anent warrandice of landis ſubject to the payment of ane annuel.

Gif ony man buyis landis ſubject to the payment of ony annuel, and knawis the ſamin perfectlie, zit he hes juſt actioun of warrandice contrare the ſellar, to releive and keip him ſkaithles of the ſaid annuel, gif the ſellar obliſſis him for warrandice thairof, ather

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in ſpecial, or be the general clauſe of warrandice uſit and wont in the chartouris of alienatioun. 23 *Junij*, 1551, Elizabeth Mauchan *contra Lord* Borthwik, 2 *t. c.* 234.

C. LII. Anent the calling of ane air of ward landis, beand minor.

GIF ony man callis ane air of ward landis, beand minor, and of les age, to warrand to him ony landis or tenementis, the ſaid minor is not haldin to anſwer thairto, until he be of perfeit age, and then, he beand major, ſall be compellit to anſwer thairto. *De jud. c.* 100, *&* 124. *Leg. Foreſt. c.* 62.

C. LIII. Privilege of ane minor beand callit for warrand, is extendit, and helpis his colligue, beand major.

And gif it happinis twa ſiſteris, quhilkis ar heretrices of ony landis, the ane major, and the uther minor, to be callit as warrandis in ony actioun of landis or heritage, and thay baith compeir in judgment, and ſcho that is within age alledge hir to be minor, and thairfoir deſire tutoris or curatouris; the quhilk gif ſcho dois, hir ſiſter, that is major, may not be compellit to anſwer without hir; and ſwa the actioun ſall ceis and ſteip until ſcho that is minor be of perfeit age: And the like is to be underſtuid of divers airis and portioneris of landis being male, quhairof ſum ar of les age, and ſum of perfeit age, *Leg. Foreſt. c.* 83. *Item*, He quha callis ane pupil or minor in ony actioun or cauſe, for his warrand, he ſould alſo call his tutoris and curatouris, quha hes the keiping of his bodie; and in like maner him quha hes his landis in keiping be reſſoun of ward, *Leg. Foreſt. c.* 64.

Anent minoris, and privilege grantit to thame.

C. I. Minoris may not mak aith, be witnes, nor ſtand in judgment.

NANE ſall mak ane aith, or bear witneſs, or mak anſwer or defence in judgment, in ony actioun or cauſe within burgh, that is minor, and of les age; bot his tutor and wardatar that hes him in keiping ſall anſwer for him in the premiſſis, and ſall thole dome in his name, according to the law. *Leg. burg. c.* 83. *Leg. Foreſt. c.* 42.

C. II. A minor may not be compellit to anſwer in criminal cauſis.

GIF ane minor be challengit for ony felonie or treſpas, he ſall be attachit be ſaif and ſuir pledgis; bot ſa lang as he is within perfeit age, he may not be compellit to anſwer thairanent, nor zit in cauſis tuichand life or lim, bot thairefter, quhan he is cum to perfeit age, he ſall anſwer thairto, *Lib. 2. c.* 43. *Leg. Foreſt. c.* 15. *Lib. 3. c.* 27. *De jud. c.* 100. Bot ane minor may be compellit to anſwer anent the raviſhing of a woman, alledgit to be done and committit be him. *De jud. c.* 124.

C. III. Ane minor ſould not anſwer upon his heritage.

IT is generallie to be underſtuid that ane minor, beand within lauchful age, may not be compellit to anſwer in ony actioun, or pley, quhairby he may be deprivit of his heritage, *Lib. 3. c.* 27. *De jud. c.* 100. Nor zit in the breve of richt, nor in the breve of mortanceſtrie, until he be of perfeit age, *De jud. c.* 83. Becauſe na certane, firm, nor ſtabill ſentence or dome may be gevin aganis him, beand of les age, ſuppoſe he with conſent of his tutoris and

curatouris mak anſwer thairto; for quhen he cumis to age, he may revoke the ſamin, and deſire to be reſtorit *in integrum*, *Lib.* 4. *c.* 47. And thairfoir, gif ony woman, beand ane heretrix of landis, of perfeit age, and cled with ane husband of les age, within twentie ane zeiris, be callit as warrand in ony actioun of landis and heritage, ſcho may compeir, and be decernit to warrand the ſamin landis, quhilkis cumis and movis of hir, as heretrix thairof; bot efter ſcho is decernit to warrand the ſamin, ſcho may not be compellit to anſwer in the principal cauſe until hir husband be of perfeit age, *Lib.* 4. *c.* 54. *Item*, A minor may not be compellit to enter in proces or pley upon his heritage, or upon ony contract or obligatioun, directly tending to the depriving him of his heritage, or ony part thairof, until the minor be of twentie ane zeiris complete, quhidder male or female; for, in this cais, thair is na difference anent the nombre of zeiris or age betwix ane air male and female; for the ane, als weil as the uther, in this cais, ſould bruik and joiſe the privilege and benefit of minoritie unto the age of twentie ane zeiris compleit. 6 *Mart.* 1554, *Sir* Alexander Williamſon *contra* Margaret Forreſter. 17 *Junij*, 1568, Alexander Forbes *of* Pitſligo *contra N.*

C. IV. The privilege of the minor is extendit to his colligue beand major.

GIF ony landis pertene in heritage conjunctlie and undivydit to ſindrie perſounis, quhairof ane of thame is of les age, and the remanent of perfeit age, nane of thame may be perſewit for the tinſel of thair heritage; becauſe in this cais the privilege grantit to the minor, and him that is of les age, helpis him that is major and of perfeit zeiris. 23 *Maij*, 1541, 1 *t. c.* 1074.

C. V. A minor may not be compellit to anſwer in actioun of reductioun of his heritage.

ANE minor beand callit for reductioun of the infeftment of his landis and heritage, ſould on na ways be compellit to anſwer thairto, until he be of lauchful and perfeit age of twentie ane zeiris compleit; becauſe the ſamin is foundit upon the ground richt and propertie of his landis and heritage, and tendis unto the tinſel thairof. 4 *Julij*, 1533, Thomas Dudingſtoun *contra* Sibella Dudingſtoun. 19 *Decemb.* 1558, Alexander Spittel *contra* Sibella Spittel, 2 *t. c.* 432. 9 *Decemb.* 1541, 2 *t. c.* 351.

C. VI. A minor ſould not be compellit to anſwer in actioun of doubill poinding.

IN actiounis and cauſis of doubil poinding for the maillis, profitis and dewteis of landis, ane minor may not be compellit to pley, in reſpect the ſamin concernis his heritage, and the ground richt thairof, in ſa far as the richt of his propertie cannot be conſiderit, unleſs he be compellit to enter in pley for his heritage. 5 *Novemb.* 1573, *Erle of* Mar *contra the Laird of* Pittarro, 2 *t. c.* 351.

C. VII. A minor in ward may not be compellit to deliver infeftmentis of his landis, be reſſoun of ony obligatioun maid be his predeceſſour.

GIF ony perſoun obliſſis him and his airis to give infeftment of ony landis to ane uther, with clauſe of warrandice contenit thairintil, and he deceis, leivand behind him ane air, quha, not beand of perfeit age, and haldand his landis be ſervice of ward and releif, fallis in ward in the ſuperiouris handis, he ſould not be compellit to give ony infeftment conform to his predeceſſouris obligatioun: And albeit ane decrete be obtenit aganis him, decernand him to give the ſamin, nevertheles the ſamin ſould have na executioun aganis him

him during the time of his minoritie and ward; becauſe he beand minor, and his landis in the ſuperiouris handis be reſſoun of ward, cannot infeft utheris, until he himſelf be firſt infeft thairintill at his perfeit age. 18 *Feb.* 1541, Agnes Lindſay *contra* William Craw, 1 *t. c.* 537.

C. VIII. A minor may be compellit to anſwer anent the improbatioun of his infeftment.

ANE minor may be compellit to anſwer in ſum actiounis and cauſis concerning his heritage, *viz.* in actiounis and cauſis of improbatioun of his heritabill infeftment, and ſaſine of his landis and heritage, intentit and perſewit aganis him; becauſe it is contrare to juſtice and gude conſcience, that he ſould report ony commoditie of the decept, fraud and falſet of his predeceſſouris. Attour, befoir his perfeit age it micht happin the witneſſis to deceis or inlaik, quhilk ar inſert in the ſaid infeftment and ſaſine. 1 *Mart.* 1546, *The Quenis Advocate* contra David Weymis, 2 *t. c.* 177.

C. IX. A minor ſucceidand to landis quhilk pertenit to his predeceſſour be reſſoun of foirfaltour, ſould anſwer thairanent.

GIF ony manis landis be gevin and diſponit be the King, (be reſſoun of foirfaltour led and deducit aganis him) to ane uther, and he to quhom the ſamin is gevin obtene heritabill infeftment thairof, and thairefter deceis, leivand behind him ane air of les age, quha, efter his deceis, enteris as air to him in the ſamin landis, and obtenis ſaſine thairof; gif he that was foirfaultit be thairefter lauchfullie reſtorit, and callis and perſewis the ſaid air for reductioun of his ſaid predeceſſouris infeftment, the ſaid air, albeit he be minor, and the ſamin landis be heritage to him, may be compellit to anſwer thairanent; becauſe utherwayis ane man beand unjuſtlie foirfaltit, ſould be wrangouſlie defraudit and debarrit fra his heritage, be the minoritie of ane air, aganis all equitie and reſſoun. 11 *Decemb.* 1546, *Sir* James Hamiltoun *contra the Laird of* Gaſtoun, 2 *t. c.* 171.

C. X. A minor ſumtime ſould anſwer anent the reductioun of his infeftment.

ANE minor beand callit for reductioun of the infeftment of the landis and heritage gevin to him be ony perſoun, in defraud of his creditouris quha gave the ſamin, may be compellit to anſwer anent the reductioun; becauſe ane minor ſould not be maid rich with ane uther manis hurt and ſkaith. 12 *Feb.* 1549, *Lord* Seytoun *contra* Alexander Cokburne.

C. XI. *Lis conteſtata, vel mota, contra prædeceſſorem, perpetuatur etiam contra ejus heredem minorem.*

ANE minor may be compellit to enter in pley in ony actioun or cauſe concerning his heritage, gif the ſamin was intentit aganis his predeceſſour, ſwa that litiſconteſtatioun was maid thairin befoir his predeceſſouris deceis, 16 *Novemb.* 1574, *Abbot of* Dumfermling *contra the airis of Mr.* George Creichtoun, 2 *t. c.* 368. *Item,* Ane minor may be compellit to anſwer in actiounis concerning his heritage, gif the ſamin was intentit aganis his father befoir his deceis, and was dependand be ſummoundis the ſamin time that he deceiſt. 23 *Novemb.* 1531, Margaret Inglis *contra* Melchior Cullane, 1 *t. c.* 318.

C. XII. *Privilegiatus non gaudet ſuo privilegio, contra privilegiatum eodem privilegio.*

ANE minor ſould anſwer upon his heritage, beand perſewit be ane uther minor, or be the kirk, quhilk is underſtuid ever to be minor; and ane minor may not bruik or joiſe ony privilege of minoritie

tie contrare ane uther minor. 13 *Maij*, 1546, *The Biſchop of* Murray *contra the Proveſt of* Sanctandrois, 2 *t. c.* 182.

C. XIII. In quhat cauſis a minor may be compellit to anſwer.

ANE minor may be compellit to anſwer in ſum actiounis and cauſis, *viz.* in actiounis perſewit aganis him for his father or predeceſſouris debt, or for his awin proper debt, *Lib.* 3. *c.* 27. *De jud. c.* 100, & 124. And it is to wit, that *debitum paternum* ſould not be extendit nor underſtuid of ony actioun or obligatioun maid be his predeceſſour anent the alienatioun of his heritage, or ony part thairof, bot allanerlie ſould be aſtrictit to ſowmis of money, or uther movabill debtis, auchtand to ony man be the ſaid minor's father or predeceſſouris, 17 *Junij*, 1568, Alexander Forbes *of* Pitſligo *contra* Margaret Forbes, 1 *t. c.* 866.

Item, Ane minor may be compellit to anſwer in actiounis of diſſaſine, that is, ejectioun or ſpuilzie, *Lib.* 3. *c.* 27. *De jud. c.* 100, & 124. Becauſe a pupil, albeit of ſax or ſevin zeiris of age, may be convenit and compellit in all civil actiounis of movabill gudis and geir, ſic as in civil cauſis of ſpuilzie, *ne locupletetur cum aliena jactura, aut rem alienam injuſtè detineat*, 23 *Feb.* 1541. Nota, *Minor non poteſt conveniri de ſpolio ante decimum quartum annum ætatis.* 28 *Novemb.* 1565, Jonet Bryſone *contra* John Somerville, 2 *t. c.* 46.

C. XIV. A minor ſould anſwer anent conqueiſt landis.

GIF ane beand minor, and of les age, purches or conqueis landis or tenementis, and in time of his minoritie obtene infeftment thairof, he may be callit and compellit to anſwer anent the propertie and richt of the ſaidis landis or tenementis, *Lib.* 3. *c.* 26. *De jud. c.* 100, & 124. Attour, ane minor may be compellit to anſwer in ony actioun or cauſe of reductioun of his infeftment maid and gevin to him of conqueiſt landis, that is, of all and ſindrie landis quhilk he is infeft in, and quhilk pertenit not to his predeceſſouris; becauſe his les age in this cais ſould help him, and not hurt utheris. 21 *Maij*, 1542, *The King* contra *the Cardinal's ſone*, 2 *t. c.* 95.

C. XV. The over-lord of les age ſould anſwer at his vaſſal's inſtance, ſeik and reſtitutioun of his heritage.

ITEM, Gif ony over-lord, beand minor, hes the ward and keiping of his tenent, beand in like maner of les age, togidder with his landis and heritage, and it happin the tenent to cum to perfeit age, his over-lord not beand yet of perfeit age, and thairfoir to rais the breve of mortanceſtrie, and deſire reſtitutioun of his landis and heritage, his ſaid over-lord is haldin to anſwer to him thairanent, notwithſtanding his minoritie; for, be the privilege of his les age, he may not ſtop the tenent, beand of perfeit age, to enter to his landis and heritage, *Lib.* 3. *c.* 26. *De jud. c.* 100. *Lib.* 2. *c.* 43. *De jud. c.* 123.

C. XVI. Anent patronages of kirkis.

ITEM, Ane minor within age is haldin to anſwer in actiounis concerning the richt of patronage, *viz.* quhen ony queſtioun ariſis anent the laſt preſentatioun, and quhidder he that was laſt preſentit was lauchfullie preſentit, or not. *De jud. c.* 124.

C. XVII. Anent actiounis of poſſeſſioun.

ITEM, Ane minor is obliſt of the law to anſwer in actiounis and cauſis of poſſeſſioun intentit and perſewit aganis him; for the perſewar, in ſic ane actioun, clamis nathing concerning the ground richt

richt and propertie, bot allanerlie deſyris to be admittit in the ſamin place and ſtate quhilk his predeceſſour was in of befoir. *Lib.* 4. *c.* 47.

C. XVIII. Anent actiounis of tierce.

ITEM, Gif ane woman, efter the deceis of hir husband, callis and perſewis the air, beand of les age, for hir dowrie, and tierce of hir husband's landis, the air, notwithſtanding of his minoritie, may be compellit to anſwer thairanent, *De jud. c.* 124. *Leg. Foreſt. c.* 63. Becauſe, quhen the woman clamis hir dowrie, or conjunct-fie, ſcho hurtis nor prejudgis not the air, or proprietar thairof, of the propertie or heritabil richt of the ſamin; for the thrid part, or conjunct-fie, quhilk ſcho bruikis and joiſis induring hir lifetime, efter hir deceis returnis to the twa part, and is conſolidat with the ſamin. Mairover, ane minor is haldin to anſwer in all ſic cauſis, for utherwayis, gif the woman ſould delay until his perfeit age the petitioun of hir dowrie, it micht be that in the mene time ſcho had nathing for hir ſuſtentatioun, or happinis to deceis, and ſwa tyne hir dowrie without ony fault committit be hir, *De jud. c.* 159. Nevertheles, ſuppois the ſaid air, beand minor, may not alledge, nor zit alledgis ony reſſonabill cauſe quhy he ſould not warrand the ſaid dowrie to hir quha clamis the ſamin, zit quhen he cumis to perfeit age, he may of the law ſay aganis the ſamin, and allege ane cauſe and reſſoun, gif he ony has, quhy he ſould not warrand the ſamin; for in this cais it is leaſum to him to allege in his majoritie that quhilk he pretermittit, and could not do in his minoritie. *Stat. Will. c.* 25. *Leg. burg. c.* 151. *De jud. c.* 88.

C. XIX A minor ſould not anſwer upon his heritage, albeit the frank tenementar be livand.

ITEM, Ane minor within les age may not be callit or perſewit upon his heritage, or ony uther thing concerning his heritabill richt, befoir his perfeit age of xxi. zeiris, albeit his guidſchir or grandſchir be on life, and have the frank tenement of the ſamin landis reſervit to thame. 13 *Novemb.* 1497, *Sir* David Moubray *of* Barnbougal *contra the Abbot of* Lundoris, 1 *t. c.* 132.

ANENT bairnis to be put in fie of landis, and thair anſwers. *Ja.* III. *fol.* 47. *act.* 8. 9 *Octob.* 1466.

Suſtentatioun of minoris.

C. XX. Anent the ſuſtentatioun of a minor havand baith ward landis and blanche landis.

ANE minor havand ſum landis haldin blanche, and ſum landis haldin be ſervice of ward and releif, induring the time that he is in ward, he aucht and ſould be ſuſtenit in all neceſſaris concerning meit, drink, claithis, halding at the ſchulis, conform to his eſtait and facultie, of the maillis, profits, and dewteis of his blanche ferm landis allanerlie, gif the ſamin be ſufficient for his ſuſtentatioun; utherwayis the ſuperiour havand the ward landis in his handis, at the modificatioun and taxatioun of ane Judge, aucht and ſould give ſa mekle of the profits thairof as the Judge ſall think expedient zeirlie, and ilk zeir induring the time of the ward and non-entres, that is to ſay, of ilk twentie pundis worth of land, five merkis money zeirlie, for the quhilk the intromettaris or occupyaris quhatſumever, quhidder it be ſuperiour, his donatar, or aſſignay, or thair tenentis of the ſaid ward landis, thair gudis and geir may be poindit and

and diſtrenzeit be the ſaid minor zeirlie during the ſaid ſpace. 22 *Feb.* 1512, Adam Cuninghame *of* Capringtoun *contra N.* 6 *Mart.* 1506, *The Laird of* Segie *contra his ſuperiouris.* 15 *Junij*, 1532. 18 *Julij*, 1532. 20 *Junij*, 1555, *Lord* Saltoun *contra Laird of* Fyvie. 1 *April.* 1536. And in this cais, all tierces and conjunct-fies pertening to the Ladies, aucht and ſould be deducit, and on na wayis pay ony part of the ſaid ſuſtentatioun, 22 *Novemb.* 1518, Patrik Monteith *contra the Laird of* Keir, 1 *t. c.* 175. Becauſe a Lady tiercear, or conjunct-fear, havand ane tierce or conjunct-fie of ward landis, or blanche landis, pertening to ane minor, beand under tutorie, or in ward in the ſuperiouris handis, may not be compellit to contribute, efter the rate and quantitie of hir tierce or conjunct-fie, with the ſuperiour or tutor, for the ſuſtentatioun of the minor. *Ult. April.* 1534, 1 *t. c.* 967.

C. XXI. Of ane minor havand blanche and ward landis, or ward landis allanerlie.

ANE minor beand in ward be reſſoun of his les age, and havand blanche ferme-landis, or ony uther gudis or geir, by his ward landis, quhairwith he may be ſufficientlie ſuſtenit, his ſuperiour is not haldin to give him ony part or portioun of the ward landis for his ſuſtentatioun, 1 *Decemb.* 1534, Patrik Buchanane *contra* James Stewart. And gif he has na uther gudis, geir, nor landis, bot ward landis, he ſall be ſuſtenit of the ſamin be his ſuperiour. 16 *Novemb.* 1532, 1 *t. c.* 462.

C. XXII. The gudſchir ſould ſuſtene the nepvoy.

GIF ony man puttis his ſone, dochter or nepvoy in fie of his landis reſervand the frank-tenement thairof to himſelf, during his lifetime, and it happin the perſoun quha is put in fie of the landis to deceis, leivand behind him ane bairn or bairnis, male or female, the frank-tenementar aucht and ſould ſuſtene thame all honeſtlie, as effeiris, upon his awin expenſis, until thay be of perfeit age; becauſe he has reſervit to himſelf the frank-tenement of the haill landis and heritage, quhilk ſumtime pertenit to thair father. 6 *Feb.* 1505, George Gudlet *contra* Archibald Douglas, 1 *t. c.* 27.

Of keiping of minoris perſounis.

C. XXIII. He ſould have the keiping of the minor, to quhom the ſamin is left in teſtament.

GIF the father, in his teſtament or latter will, leivis the keiping of his bairnis, beand pupillis, with the intromiſſioun with the gudis and geir to ony freind or perſoun, the mother nor the tutor ſould not have the keiping of the bairnis, nor the adminiſtratioun of thair gudis, bot he allanerlie to quhom the ſamin was left, as ſaid is. 10 *Junij*, 1553, 1 *t. c.* 1149.

C. XXIV. The mother ſould have the keiping of the bairn, until he be of ſevin zeiris of age.

THE cure and keiping of ane air, beand minor, and of all uther minoris, pertenis to the mother efter the deceis of thair father, quhill thair age of ſevin zeiris compleit; and the mother in this cais aucht and ſould be preferrit to the ſaid minor's guidſchir, and to all the reſt of his freindis and kinniſmen, 22 *Maij*, 1527, Jonet Foreman *relict of umquhil* Alexander Oliphant *of* Kellie *contra* Johne Oliphant *of* Kellie *Knicht.* 1 *Martij*, 1517, Marjorie Durie *contra Laird of* Dowhill *and* Lochlevin. 4 *Aug.* 1516, *The King and* Tullibardin *contra the Laird of* Wedderburne, 1 *t. c.* 289.

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C. XXV. Air of ward landis beand paſt the age of ſevin zeiris, ſould be in his ſuperiouris keiping.

THE ſuperiour havand the ward and mariage of ony air pertening to him, beand paſt the age of ſevin zeiris, may call and perſew the mother, with-halder of the ſaid air, to deliver the ſaid air to him within ſax dayis, or ellis to compeir within the ſamin ſpace, and ſchaw ane reſſonabill cauſe quhy ſcho ſould not do the ſamin; the quhilk gif ſcho failzies to do, letteris ſall be direct *ſimpliciter* to that effect, 4 *Junij*, 1542, *Laird of* Lundie *contra Lord* Innermeith, 1 *t. c.* 672. Becauſe in this cais the ſuperiour aucht and ſould be preferrit to the mother, tutor, and all uther perſounis, 16 *Julij*, 1531. *Pen. Julij*, 1532, *The Abbot of* Aberbrothok *contra* Marjorie Forbes, 1 *t. c.* 667.

C. XXVI. Air of blanche landis beand paſt the age of ſevin zeirls, ſould be in the tutoris keiping.

ANE minor beand paſt ſevin zeiris of age, ſould not be in the keiping of his mother thairefter; becauſe his tutor, gif the pupil have allanerlie blanche landis, and the tutor be not narreſt to ſucceid to him, ſould have the keiping of his perſoun, 18 *Feb.* 1551, George Clepan *contra the Laird of* Weymis. Togidder with his tour, fortalice and manor-place, gif ony he hes, until his age of xiiij. zeiris compleit, except the tutor do dilapidat and waiſt the ſaid pupil's gudis and geir; for he, beand a manifeſt abuſer and waiſter thairof, ſall not have his perſoun in keiping, 29 *Mart.* 1561. 7 *Junij*, 1561, James Spalding *contra* James Fleſhour. 16 *Maij*, 1548, Johne Crawfurd *contra* Elizabeth Hunter, 1 *t. c.* 667. And it is to wit, that the tutor dative has the keiping of the pupil, and is preferrit thairintill to the narreſt kinniſman, as to the father brother, 13 *Maij*, 1534, 1 *t. c.* 982. Bot the pupil's perſoun ſould not be in the keiping and cuſtodie of the tutor, gif the tutor be narreſt to ſucceid to him, or gif he has movit ony actioun or pley aganis him, tending ony wayis to the depriving him of his heritage or landis. 9 *Maij*, 1558, Thomas Diſchingtoun *contra* Mathou Hamiltoun, 2 *t. c.* 275.

C. XXVII. He quha has the richt of the minor's mariage, ſould be preferrit to his tutor, bot not to his ſuperiour.

GIF ony perſoun has juſt richt and titill to the mariage of ony air, beand of les age, albeit he have na richt to his ward, he aucht and ſould be preferrit to the ſaid minor's tutor anent the keiping of his perſoun, bot ſould on na wayis be preferrit thairintill to the ſuperiour or wardatar. 21 *Octob.* 1532, *The Biſchop of* Murray *contra Lord* Drummond, 1 *t. c.* 673.

C. XXVIII. The pupil beand of fourtene zeiris of age, is at his awin libertie anent the keiping of his perſoun.

ALBEIT the ſuperiour, tutor, or ony uther perſoun, have the keiping of the perſoun of the pupil, nevertheles the pupil beand of fourtene zeiris of age compleit, his perſoun is not under his keiping, bot he is fré, and at his awin libertie; becauſe ward and keiping of minoris pertening to the ſuperiour, tuiching the keiping of the minor's perſoun, the ſamin endis at the ſamin terme and zeiris as tutorie uſis to do, *viz.* at fourtene zeiris; albeit it be utherwayis tuiching landis, gudis and geir, the keiping of which enduris quhill his perfeit age, 26 *Mart.* 1534, 1 *t. c.* 965. Gif the ſuperiour gevis and diſponis to ony man the ward and mariage, or allanerlie the mariage of ony air, pertening to him, the ſaid donatar aucht and ſould not have the keiping of the ſaid air's perſoun, he beand of the age of xiiij. zeiris compleit, becauſe he is then at his awin fré will and libertie to remane quhair he pleiſis, *et intelligitur veniſſe*

veniſſe in ſuam tutelam, et eſſe in ſua ipſius cuſtodia. 27 *Mart.* 1533, Jonet Newtoun *contra N.* Ker *of* Merſingtoun. 26 *Mart.* 1534, William Matheſone *contra* Jonet Wedderby, 1 *t. c.* 455.

C. XXIX. The ſuperiour is preferrit to the pupil's father and kinniſman.

GIF ony man maryis ane heretrix of landis, haldin be ſervice of ward and releif, and thairefter ſcho deceis, leivand behind hir bairnis gottin betwix thame, male or female, the keiping of the ſaidis bairnis, beand minoris, and within perfeit age, pertenis to the ſuperiour of the ſaidis landis; for he aucht and ſould have thame deliverit to him, and have thame in his keiping, that he may diſpone upon thair mariage; and in this cais he ſould be preferrit to thair father, and uther kinniſmen or freindis quhatſumever. 28 *Julij*, 1529, James Sandilandis *of* Calder *contra* Edmund Sinclair, 1 *t. c.* 292.

C. XXX. A ſuperiour is preferrit to the tutor.

ANE minor havand blanche landis, and alſo havand ward landis, fallin in the ſuperiour's handis be reſſoun of ward, his tutor of the blanche landis aucht on na wayis be reſſoun of tutorie to have the keiping of the minor's perſoun, becauſe the ſamin pertenis to the ſuperiour, his donatar or aſſignay; and the ſuperiour, or ony cled with his richt, is preferrit in this cais to the tutor, albeit he be not narreſt to ſucceid to the pupil. 28 *Jan.* 1547, Patrick Hepburne *contra* Elizabeth Ker, 1 *t. c.* 627.

C. XXXI. The gudeſchir is preferrit to the tutor, bot not to the ſuperiour.

THE gudeſchir, efter the deceis of his ſone, aucht and ſould have the keiping of his nepvoy, as narreſt of kin to him, and deſcendand lineallie of his bodie, as air of line to him narreſt to ſucceid to his landis and heritage; and in this cais aucht to be preferrit to the tutoris or curatouris, gif ony be, ſuppois the ſuperiour be preferrit to him in this cais, gif the ſaid nepvoy has ony landis fallin in ward be reſſoun of his minoritie. 16 *Decemb.* 1553. *Pen. Feb.* 1553, George Gorthie *contra Lord* Methven, 1 *t. c.* 751.

Anent replegiatioun.

C. I. How ane ſould be replegit to his awin court.

IT is to wit, that gif ony perſoun be perſewit in ony actioun, civil or criminal, befoir ony Judge, that is not competent to him in the cauſe quhairin he is perſewit, he ſould compeir befoir the ſaid Judge to quhais court he is ſummoundit, havand with him his awin Lord or Judge's Baillie, lauchfullie conſtitute to the effect within writtin, havand in his hand his over-lord or Judge's full powar in that part, gevin and grantit to him be his letter and ſeill; and thair the defendar ſall heir the partie perſewar's aith, clame and challenge; the quhilk beand heird, the ſaid Baillie ſould deſire the defendar to be repledgit to his awin Lord and Judge's court, and to that effect ſall ſchaw in judgment his powar and letter of bailliarie in that part; for gif he ſchawis not the ſamin inſtantlie, the defendar on na wayis at that time may be repledgit be him: And gif the Judge reſſavis and admittis the deſire of the ſaid Baillie, and ſufferis the defendar to be repledgit to his Judge competent, the defendar ſould leive ane pledge, that is callit *Culreach*, behind him in the court,

court, fra the quhilk he is repledgit, to the effect and end, that gif the perſewar gettis not juſtice, nor full reſſoun, in the court to the quhilk the defendar is repledgit, he ſall have regres and return to the firſt court, and thair perſew his actioun to the final end thairof, and the ſaid *Culreach* ſall be in ane unlaw, and mairover ſall anſwer thairefter to the partie perſewar, for the defendar, in that cauſe, gif it happinis the defendar not to compeir: And gif it be lauchfullie provin be ſufficient witneſſis of ſindrie baronies, that the Judge to quhom the defendar was repledgit, failzyit to do juſtice to the perſewar, he ſall tyne his court for ane zeir and day, the quhilk ſall be in the King's will and mercie; and the ſaid defendar ſall return to the firſt court, fra the quhilk he was replegit, and thair anſwer to the perſewar: And gif he failzies to do the ſamin, his *Culreach* ſall anſwer for him, as ſaid is, *Mod. ten. cur. c.* 12. *Quon. attach. c.* 3. *De jud. c.* 28. *Lib.* 4. *c.* 29. And the replegiatioun beand admittit, and the ſaid cautioun of *Culreach* beand alſo fund, as ſaid is, the perſewar ſall find ane borgh in the ſaid Baillie's handis, that he ſall cum and perſew his partie defendar in the court to the quhilk he is replegit, *Lib.* 4. *c.* 7. Galbraith. *Item*, Gif the Judge or Lord of the court, to quhom the defendar is deſyrit to be replegit, has divers and ſindrie courtis, his Baillie ſould aſſigne to the perſewar ane certane day and place to cum and perſew his cauſe, *Mod. ten. cur. c.* 12. *Lib.* 4. *c.* 29. *Item*, Gif the defendar allutterlie denyis the actioun and clame of the perſewar in ony court, befoir ony Judge, he may not be replegit fra him in that cauſe to ony uther Judge, bot ſall be compellit to anſwer befoir him unto the end of the cauſe, *Mod. ten. cur. c.* 12. Suppois his Lord, Judge or Baillie cum with ſufficient powar, and deſire him to be replegit; for he makand anſwer in maner foirſaid, be his awin negligence and fuliſhnes, prejudgis himſelf anent his awin Judge, at that time, and in that cauſe. *De jud. c.* 28.

C. II. Of the Judge refuſand to admit replegiatioun.

GIF ony perſoun dwelland within the regalitie beis perſewit befoir the Schiref of the ſchire, within the quhilk the ſaid regalitie lyis, gif he quha has the landis in regalitie ſendis to replege his man fra the Schiref, and the Schiref refuſis to do the ſamin, the Lordis of Seſſioun, at the deſire of the ſaid Lord of regalitie, may direct letteris, charging the ſaid Schiref, and his deputis, to remit the ſaid perſoun to the Judge of ſaid regalitie for that effect. 8 *Mart.* 1543, 1 *t. c.* 1078.

C. III. Replegiatioun ſould not be admittit efter litiſconteſtatioun.

ITEM, Gif ony man, havand ane Lord or Judge competent, be perſewit in ony actioun and cauſe befoir ony uther Judge, and nevertheles deſyris not to be replegit to his awin Judge's court, it is leaſum to his Judge or Baillie to cum to that court quhair his man is perſewit, and offer ane pledge of *Culreach* for his man, and for the privilege and libertie of his awin court; and gif he dois the ſamin in due time, and befoir litiſconteſtatioun be maid in the cauſe, (*ante judicium datum*) his replegiatioun ſall be admittit, except the ſamin be within the King's burgh, tuiching ane complaint or contraverſie ryſin within the ſamin: Bot gif replegiatioun be alledgit efter litiſconteſtatioun, the ſamin ſould not be admittit, and the defendar ſall be compellit to anſwer in that court to the end of the cauſe,

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Lib. 4. *c.* 29. Litiſconteſtatioun beand maid befoir ane Judge, na partie perſewit befoir him may be replegit fra him, to ony uther court or juriſdictioun, bot the cauſe aucht and ſould be endit be the Judge befoir quhom litiſconteſtatioun is maid. 21 *Novemb.* 1533. 24 *Maij*, 1542, 1 *t. c.* 964.

C. IV. It is leaſum to all perſounis to uſe replegiatioun.

ITEM, Suppois ane partie defendar has divers and ſindrie times perſewit, or defendit, in ony actioun or cauſe in time bygane befoir ane uther Judge than his awin Judge competent, gif he thairefter be perſewit befoir the ſamin Judge, in ony uther cauſe, he may nevertheles deſire to be perſewit befoir his awin Judge competent; for albeit he perſewit or defendit in ſindrie uther actiounis, as ſaid is, he micht not thairby prejudge nor hurt his awin competent Judge anent the libertie of his court, and privilege to repledge his awin men to the ſamin quhen he pleiſis. *Leg. For. c.* 14.

C. V. Quha may be replegit.

IT is ſtatute and ordanit, that na Biſchop, Abbot, or Kirkman, Erle, Baron, Knicht, or ony uther liege of this realme, in ony time cuming, ſall replege, or ſeik to borgh ony perſoun, as his awin man, perſewit or accuſit for ony actioun, cauſe, crime or treſpas, bot gif the ſamin perſoun be challengit to be his awin liege man, or dwelland on his landis, or haldand landis of him, or his ſervitor remaneand in his ſervice and familie; and gif ony dois in the contrare, and it be ſufficientlie provin that ony man has replegit ane uther for gift or profit takin or reſſavit fra him that is replegit, he ſall be thairfoir in the King's will and mercie. *Aſſiſ. Reg. David. c.* 37. *Stat. Alex. c.* 4.

Anent advocatioun of actiounis.

C. I. How and for quhat cauſis actiounis may be advocat.

PLEYIS and actiounis cumis ſumtimes directlie, and at the begining thairof, to the King's court, or to ony uther court, and is thair endit, and finallie decidit; and ſum uther pleyis and actiounis cumis indirectlie, and efter the beginning thairof, as be advocatioun, *Lib.* 2. *c.* 16. And it is ſtatute and ordanit, that na advocatioun of cauſis be takin be the Lordis, except it be in cauſis of deidlie feid, or that the Schiref principal, or Judge ordinar, be partie, or the cauſis of the Lordis of counſal, or thair advocatis, ſcribes and members. *Mar. R. fol.* 6. *c.* 39. *in fine.* 20 *Junij*, 1555.

C. II. Deidlie feid is a juſt cauſe of advocatioun.

DEIDLIE feid ſtandand unreconcilit betwix the partie and the Schiref, or ony uther inferiour Judge, the ſaid partie, and his partakeris, with thair houſhald men, tenentis and ſervandis, aucht and ſould be exemit fra the juriſdictioun of the ſaid Schiref, or Judge; and the Lordis of counſal ar Jugeis competent to all actiounis and cauſis concerning the ſaid perſoun and his foirſaidis, quhilk aucht and ſould have had proces befoir the ſaid Schiref or Judge, to be callit befoir thame, but diet or tabill. 4 *Mart.* 1545, *The Lord* Methven *contra Lord* Gray, 1 *t. c.* 979.

C. III. Gif the Judge be ſuſpect, the cauſe may be advocat fra him.

GIF ony Judge, beand within the degré defendand to the perſewar, refuſis to give deputis unſuſpect under him, to ſit and uſe the office of ane Judge in the defendar's cauſe, the defendar requirand and deſyrand ane depute, the ſamin beand ſufficientlie provin be writ, the actioun and cauſe ſould be advocat fra him to ane uther Judge. 12 *Feb.* 1534. 26 *Jan.* 1535, 1 *t. c.* 994.

C IV. The cauſe may be advocat be reſſoun the Judge refuſis to do juſtice.

GIF ony inferiour Judge within this realme, beand requirit to do juſtice in ony actioun or cauſe dependand befoir him, refuſis to do the ſamin, the ſaid actioun or cauſe aucht and ſould be advocate fra him to the ſuperiour Judge, 14 *Mart.* 1541, 1 *t. c.* 1070. And ſiclike, gif ony Judge has failzeit in doing of juſtice to ony perſoun in his court, and the ſamin be ſufficientlie provin aganis him, it is ane ſufficient and lauchful cauſe of advocatioun. *Lib.* 3. *c.* 16.

C. V. The iniquitie of the Judge is ane juſt cauſe of advocatioun.

GIF ane Schiref, or uther inferiour Judge, gevis ane decreit aganis ony perſoun, the quhilk thairefter, at the ſamin perſoun's inſtance, is reducit, and declarit to have bene wrangouſlie gevin aganis him, he ſould be exemit fra the juriſdictioun of the ſaid Schiref or Judge, in time to cum, in all uther cauſis and actiounis pertening to him. 6 *Feb.* 1561, Johne Scheill *contra* Johne Gudelad. 18 *Junij*, 1543, 1 *t. c.* 1276.

C. VI. The wechtines of the cauſe is ane juſt cauſe of advocatioun.

THE Lordis of counſal, *ex officio*, at the inſtance of the partie, may advocat to thameſelfis all actiounis and cauſis intentit and perſewit befoir ony inferiour Judge within this realme, upon greit and exorbitant ſoumis of money, as the circumſtance of the ſamin actioun dois require, albeit the ſamin cauſe be not advocat; for it is ane ſufficient cauſe of advocatioun gif the clame or libel contene ane greit ſoume or quantitie of ſilver, or uther wechtie materis of greit importance, albeit the uther partie oppone him to the advocatioun thairof. 15 *Feb.* 1542, *Laird of* Strathurd *contra Ladie* Beredaill. 20 *Maij*, 1542, 2 *t. c.* 132.

C. VII. Ane actioun may be advocat be reſſoun of the contumacie of the partie.

ANE actioun beand deſyrit to be advocat fra the inferiour Judge to the Lordis, for ony reſſoun or cauſe, and the partie defendar in the cauſe of advocatioun compeir not, and thairfoir is contumax; the Lordis, in reſpect of the contumacie of the partie not compeirand, may procede to the geving of the ſentence of advocatioun, notwithſtanding that the partie perſewar preive not, nather may preive his reſſoun of advocatioun. 26 *Novemb.* 1543, *N. contra Baillies of* Striviling, 2 *t. c.* 156.

C. VIII. He quha is Judge in the principal cauſe, is alſo Judge in the acceſſore.

DECRETE beand obtenit befoir the Lordis, with letteris conform thairto, gif the obtenar thairof poind or diſtreinzie ony man's gudis or geir, and thairefter is callit for ſpuilzie befoir the Schiref, or ony uther inferiour Judge, the ſamin cauſe and actioun, at the inſtance and ſute of the partie defendar, may be advocat to the ſaidis Lordis of counſal; becauſe the actioun and cauſe, and the defence thairof, ar foundit upon the decrete of the Lordis, and thairfoir the ſamin ſould be decydit befoir thame, quhair the principal de-

crete was obtenit, and befoir na uther Judge. 20 *Feb.* 1542, *Laird of* Lugtoun *contra Laird of* Maderis, 1 *t. c.* 577.

C. IX. Doubt and difficultie in the actioun is a juſt cauſe of advocatioun.

ANE actioun and cauſe dependand befoir the Schiref, may be transferrit fra him to the King's court, or to the Lordis of counſal, be reſſoun of ane doubt or difficultie ariſand in the ſamin befoir the Schiref in his court, the quhilk cannot be declarit nor decydit be him, nor be his court: And quhen ane actioun is for this cauſe transferrit fra ane court to ane uther, baith the parties, perſewar and defendar, ſould be warnit thairto. *Lib.* 2. *c.* 19. *De jud. c.* 108.

C. X. Of ane actioun deſyrit to be advocat be ane of the parties.

ANE actioun and cauſe may be deſirit to be advocat at the inſtance and requeiſt of ather of the parties; and then it is ſufficient to ſummound allanerlie him quha never deſirit nor conſentit to the advocatioun of that cauſe. *Lib.* 2. *c* 19. *De jud. c.* 108.

C. XI. Of ane actioun deſyrit to be advocat be baith the parties.

ANE actioun may be advocat with conſent of baith the parties beand preſent togidder in court; and then it is not neceſſar that ither of the ſaidis parties be ſummoundit; becauſe in this cais it is ſufficient, gif in judgment ane certane day be aſſignit to thame thairanent. *Lib.* 2. *c.* 19. *De jud. c.* 108.

C. XII. Litiſconteſtatioun ſtoppis advocatioun of actiounis.

LITISCONTESTATIOUN beand maid in ony cauſe befoir ane inferiour Judge, the ſamin cauſe or actioun may on na wayis be advocat to the ſuperiour Judge, bot aucht and ſould have proces, and end quhair it begoud, the dependance thairof beand verifyit be ane act of court quhairin the ſamin dependit. 26 *Jan.* 1533. *Ult. Mart.* 1531, 1 *t. c.* 316.

C. XIII. Ane actioun anes advocat, may not efterwart be remittit.

GIF ony actioun or pley dependand befoir ane Judge inferiour, beis advocat, for ony reſſoun or cauſe, to the ſuperiour Judge, and the ſamin advocatioun be him admittit; the ſamin actioun or pley may not be thairefter remittit to the inferiour Judge, fra quhom it is advocat, ſuppois the ſamin be advocat for na wrang or iniquitie done be him, bot for ony uther cauſe and reſſoun, conform to law and juſtice; and thairfoir the ſamin ſould be decidit, and finallie endit, be the Judge to quhom it is advocat. *Lib.* 3. *c.* 18. *De jud. c.* 101.

Of litiſconteſtatioun.

C. I. Quhat it is, and in quhat ſtait the cauſe and parties ar in efter the ſamin.

LITISCONTESTATIOUN is not maid nor inducit be proponing of ony dilatour exceptioun, nor be interloquutour gevin be the Judge; bot the ſamin is underſtuid to be maid in ony actioun or cauſe, efter the proponing of ane peremptour exceptioun, or quhen the ſummoundis, or ony part thairof, or ane peremptour exceptioun or alledgeance is admittit be the Judge to the perſewar's or defendar's probatioun, 11 *Feb.* 1541, *Tenentis of N.* contra *burgh of* Selkirk. 20 *Maij*, 1542, *N. contra airis of* Inverugie. *Item*, Efter litiſconteſtatioun is maid, the perſewar may not pas fra his ſummoundis,

moundis, nor renunce that inſtance, contrare the defendar's will and pleaſour, 15 *Feb.* 1575, *Laird of* Barganie *contra N.* 2 *t. c.* 386. And ſiclike, he may not, efter litiſconteſtatioun, correct, mend, nor *habere pro deleto*, ony ſubſtantial part of his libel. 2 *Feb.* 1548. 9 *Feb.* 1541, William Rutherfurd *contra the* Bothvile.

Anent exceptiounis and eſſonzies.

C. I. Diviſioun of exceptiounis.

THAIR ar twa kindis of exceptiounis or defenſis; for ſum ar dilatour, and ſum ar peremptour. Dilatouris prolongis and delayis the actioun or clame to ane certane time, and thairfoir ar temporal, and ſould be proponit befoir litiſconteſtatioun; quhairof ſum ar declinatorie of the judgment, as exceptiounis of the incompetency of the Judge, or of *litis pendentis*; and utheris ar properlie callit dilatour, as quhen ony man cravis his debt befoir the time. Peremptour exceptiounis ar perpetual; becauſe thay ſtay alutterlie, and for ever cuttis away the actioun or clame, and reſiſtis and ſtoppis the ſamin at all times, as exceptiounis of payment, ſentence, aith, tranſactioun, preſcriptioun, and utheris. *De except. c.* 1. *Ex lib. Scon. V. Lib.* 2. *c.* 29.

C. II. Declinatour exceptioun ſould be firſt proponit.

EXCEPTIOUN declinatour aganis the Judge or juriſdictioun, aucht and ſould be firſt proponit befoir dilatouris or peremptouris: And gif the partie propone ony dilatour exceptioun, and aſk and deſire interloquutour thairupon, he may not be heard in ony time thairefter to propone ony exceptioun, recuſatour or declinatour, albeit in the proponing of the ſaid dilatour he proteſtit for all his lauchful defenſis. 16 *Maij*, 1547, *Bp.* of Murray *contra Proveſt of* Sanctandrois, 2 *t. c.* 184.

C. III. Exceptioun aganis the Judge in actiounis of doubill poinding.

QUHEN ony actioun of doubill poinding is perſewit be ony tenentis and occupyaris of landis aganis twa parties, baith compeirand befoir the Judge, the proces and pley is underſtuid to depend betwix the ſaidis twa parties; becauſe the tinſel and winning thairof concernis thame, and not the tenentis, quha nather tynis nor winnis in the cauſe; and thairfoir the Judge, beand ſuſpect to ony of the parties, be reſſoun of conſanguinitie or affinitie with the uther, or utherwayis, may not be Judge, nor proceid in the cauſe; and gif he do, the ſamin proces and ſentence, with all that followis thairupon, is of nane avail, and may be reducit. *Pen. April.* 1558, *The Ladie* Polmais *contra the Laird of* Drumquhaſſil, 1 *t. c.* 1218.

C. IV. He that proponis ane exceptioun may not thairefter decline fra the Judge.

GIF the partie alledgeand that the Judge is ſuſpect, and hes gevin partial counſal aganis him, and the Judge, at his deſire, purgis himſelf thairof, he may not thairefter deſire the cauſe to be advocatit fra him, as Judge ſuſpect and incompetent; becauſe be the proponing of the ſaid exceptioun of partial counſal, and the Judge's purgatioun maid thairanent at his deſire, he is underſtuid to have appreivit and admittit him to be Judge; and thairfoir efterwart may not

not decline his juriſdictioun. 2 *Maij*, 1545, Johne Weir *contra* Johne Bannatyne *of* Corhous, 1 *t. c.* 598.

C. V. DILATOUR exceptiounis ſould all be proponit at twa times. *Ja.* V. *fol.* 116. *pag. verſ. in fine.* 17 *Maij*, 1532.

C. VI. EXCEPTIOUNIS dilatour ſould not be admittit contrare the ſummoundis of recent ſpuilzie, lauchfullie indorſat. *Ja.* IV. *fol.* 104. *act.* 99. *in fine*, 11 *Mart.* 1503.

C. VII. Anent the proponing of dilatouris aganis a ſummoundis of reductioun, contenand divers heidis and reſſounis.

IN cauſis of reductioun, the defendar proponand ane dilatour, quhilk is repellit, aucht and ſould thairefter propone togidder all the reſt of his dilatouris aganis the incuming, relevancie, or narrative of the ſummoundis, and failzieing thairof, ſall not be heard efterwart to uſe ony further dilatouris in that cauſe, conform to the uſe and conſuetude kept and obſervit in all uther actiounis and cauſis: Bot gif the ſummoundis, or libel of reductioun, contene divers and ſindrie cauſis of reductioun, it is leaſum to the defendar to propone ſindrie dilatouris contrare the ſaidis reſſounis, and aucht to reſſave twa interloquutouris upon dilatouris aganis ilk ane of the ſaidis reſſounis, as thay ſall happin to be brocht in be the Judge, and diſputit befoir him. 13 *April.* 1565, *Laird of* Haltoun *contra M.* Thomas Marjoribankis, 2 *t. c.* 304.

C. VIII. ANENT eſſonzies to be maid in court. *Ja.* I. *fol.* 20. *act.* 129. 6 *Martij*, 1429.

C. IX. Eſſonzeis of ſeiknes, and probatioun thairof, in criminal cauſis.

GIF ony perſoun ſummoundit befoir the Juſtice general, his deputis, or ony uther criminal Judge, to underly the law for ony crime or treſpas, to be laid to his charge, be ſeik, or ſair tuichit with infirmitie, ſwa that he may not travel, nor compeir perſonallie, the Miniſter, or Reidar, of the paroche kirk ſould compeir, and ane witnes with him, the day of compeirance, and thair, befoir the Judge, ſould beir leill and trew teſtimonie of the foirſaid perſoun's maladie: And gif the ſaid Miniſter or Reidar be in like maner ſeik, the Miniſter or Reidar of the nixt paroche kirk adjacent ſall compeir in maner foirſaid, and teſtifie and beir record of the ſeiknes of the ſaid perſoun quha is ſummoundit, and alſwa of the infirmitie of his ordinar Miniſter or Reidar. 15 *Decemb.* 1526, *The Erle of* Caſſillis *contra the Juſtice-general and his deputis*, 1 *t. c.* 284.

C. X. Eſſonzie be reſſoun of the King's proclamatioun.

GIF ony man beand ſovertie to enter ane uther man befoir the Juſtice and his deputis, to underly the law, at ane certane day, for ſlauchter, mutilatioun, or ony uther crime that may be laid to his charge, and it happin him that is ſovertie to be that ſamin day or time under our ſoverane Lordis proclamatioun, at ony raid, hoſt, or armie, and thairfoir may not enter him for quhom he was cautioner, at the day appointit, he may on na wayis be unlawit thairfoir: And gif he be unlawit, or the King or his donatar call him to heir and ſé letteris gevin to poind and diſtreinzie his gudis or landis, to the avail and quantitie of the unlaw, the ſamin aucht and ſould be ſuſpendit and diſchargit *ſimpliciter*; becauſe he beand obliſt to obey the ſaid proclamatioun, maid under the tinſel of life, landis,

landis and gudis, was not aſtrictit to keip the particular day of juſticiarie, to the effect foirſaid, under pecunial panis allanerlie; and thairfoir he was not *contumax, ſeu inobediens, ſed potiùs obediens mandato et auctoritati principis, ideoque liber ab omni pœna quæ infligi debet tantùm contumacibus ſeu inobedientibus*; quhilk proclamatioun has the ſtrenth of ane inhibitioun, to diſcharge all Jugeis criminal to proceid aganis ony perſoun that aucht to keip the proclamatioun, the ſamin ſtandand undiſchargit or ſkaillit: And gif the Judge, civil or criminal, proceid in the mene time, the ſamin proces is null, and neidis na reductioun be way of actioun, in reſpect of the notorietie of the ſaid proclamatioun. 20 *Decemb.* 1554, *Lord* Sempill *contra* William Fleming. 29 *Jan.* 1554. 29 *Maij*, 1569, *The King's Advocate and* Alexander Keith *contra the perſounis of inqueiſt*, 1 *t. c.* 741.

C. XI. Eſſonzies be reſſoun of inundatioun of water, or ſtorm of weather.

GIF ony perſoun quha ſould compeir at a certane day in judgment, to defend or perſew in ony actioun, be ſtoppit be violence of wateris, or tempeſt of evil weather, to compeir the ſamin day, and thairfoir the libel be gevin to probatioun aganis him, or the term of probatioun circumducit, or proteſtatioun admittit, he, preivand the ſamin impediment, aucht and ſould be reſtorit *in integrum*, *Ult. Feb.* 1563, Janet *and* Margaret Pookis *contra* Cha. Pook, 1 *t. c.* 1308.

Item, It is ſtatute and ordanit, that all perſounis quhilk ar makand thame readie, and under our ſoverane Lordis proclamatioun, to cum to ane raid, hoiſt or armie, efter the tenour of the proclamatioun, and alſwa the perſounis beand actuallie and alreadie in ſic ſervice, that nane of thame ſall be callit, nor proceſs paſs aganis thame for ten dayis befoir thair furth paſſing, and ten dayis efter thair hamecuming. *Pen. Jan.* 1532, 1 *t. c.* 607.

C. XII. Eſſonzie be reſſoun of burial of freindis.

GIF ony perſoun beand callit and perſewit in ane cauſe, to compeir at ane certane day, compeiris not at the ſamin, becauſe he was at the burial of his father, or uther freind or kinniſman, the ſamin is na lauchful excuſe nor exceptioun. 20 *Novemb.* 1532, *The tenentis of* Aberbrothok *contra the Abbot*, 1 *t. c.* 606.

C. XIII. Anent proponing of peremptouris.

ANE peremptour exceptioun beand proponit be the partie, and repellit be the interloquutour of the Judge, the partie aucht and ſould propone togidder, and at ane time, all the remanent of his peremptouris: And gif he failzies to do the ſamin, he ſall not be heard to uſe nor propone ony ma thairefter; becauſe ilk partie ſould be readie, quhen he cumis to the bar, to propone all his peremptour exceptiounis be word, or be writ; and delay ſould be gevin to him to give in the ſamin in writ, albeit his partie adverſar, nor his procuratour, conſent not thairto. 29 *Novemb.* 1540, Corſtorphine *contra* Foreſtar, 2 *t. c.* 10.

C. XIV. *Proponens peremptoriam affirmat libellum.*

THE defendar proponand ane peremptour exceptioun aganis ony part of the libel, is underſtuid to confirm and confeſs the libel, and all the contentis thairof, except he propone the ſaid exceptioun under proteſtatioun, that he, be the proponing thairof, affirmis not the libel. 6 *Decemb.* 1542, *M.* Johne Hay *contra* Robert Dikſone, 2 *t. c.* 128.

C. XV. Exceptiounis ſould be diſcuſſit in the ſamin ordour that thay ar proponit.

GIF ony partie proponis in judgment divers and ſindrie exceptiounis and alledgeances, under proteſtatioun, that ilk ane of thame be diſcuſſit in thair awin ordour, as thay ar proponit, and the Judge keip not the ſamin ordour in diſcuſſing of thame, quhilk was obſervit in proponing thairof, bot admittis to probatioun ony laſt alledgeance, and continewis ony former exceptioun, not proceidand in ordour, the proces, ſentence, and all that followis thairupon, is of nane avail, and may be reducit. 19 *Decemb.* 1557, 1 *t. c.* 1214.

C. XVI. All exceptiounis conſiſtand *in facto*, ſould be diſcuſſit at ane time.

ALL exceptiounis or defenſis peremptouris proponit be ony partie, conſiſtand allanerlie *in facto*, aucht and ſould be diſcuſſit be the Judge togidder, in admitting thame as relevant, or repelling thame as irrelevant, conform to the law and equitie, and that be ane interloquutor, and at ane dyet; for na diviſioun thairof, nor divers dyetis nor interloquutouris ſould be obſervit; utherwayis, gif divers ſic exceptiounis be proponit, and ſum thairof be admittit to probatioun, and ſum thairof put under continuatioun, the proces, ſentence, and all that followis thairupon, may be reducit. 5 *Maij*, 1563, *Laird of* Kinhilt *contra Laird of* Knokdaw, 1 *t. c.* 808.

C. XVII. Of proponing exceptiounis efter the term aſſignit to interloquutouris.

IT is to wit, that gif ony actioun or cauſe dependand befoir ony Judge, is reſpytit and continewit be the Judge to the nixt court, for better aviſement, as he may do of the law, anis, twiſe, thriſe, it is not leaſum to ather of the parties, betwix quhom the actioun is dependand, to alledge or eik ony ma reſſounis or exceptiounis than wer alledgit or ſchawin of befoir, until interloquutor or ſentence dependand betwix the parties be fullilie gevin and declarit. *Mod. ten. cur. c.* 17.

C. XVIII. Quhat ſould be done efter the proponing of all exceptiounis.

GIF the defendar has proponit and alledgit all his exceptiounis, and the ſamin ar repellit be the Judge, or gif he has na relevant exceptioun aganis the breve, ſummoundis or clame, the ſummoundis or clame ſould be admittit to the perſewar's probatioun, or than the actioun or cauſe may be put to the inquiſitioun and knawlege of ane inqueiſt; for ſic cauſis, be the law and conſuetude of this realme, may be decided and decernit be ane condigne inqueiſt or aſſiſe. *Lib.* 1. *c.* 13.

C. XIX. Proving of exceptiounis befoir ane inqueiſt.

QUHEN ony matter is put to the knawlege of ane inqueiſt or aſſiſe, the partie defendar aucht and ſould propone all his lauchful defenſis befoir the perſounis of inqueiſt be admittit and ſworn thairupon; utherwayis he ſall not be heard to do the ſamin thairefter. 24 *Septemb.* 1533, 1 *t. c.* 940.

C. XX. Exceptiounis may not be proponit efter denying of the libel.

THE defendar, efter that he has denyit the perſewar's libel or clame, and ſwa paſſis furth of court for that term, ſould not be heard efterwart to alledge or propone ony exceptiounis or reſſounis aganis the ſamin. *Quon. attach. c.* 49.

C. XXI. Exceptiounis may not be proponit efter concluſioun of the cauſe.

EFTER the concluſioun of the cauſe, nane of the parties ſould be heard to propone ony peremptour exceptioun or defence; and gif the Judge dois in the contrare, the ſentence and proces is of nane avail, and may be reducit. 7 *Mart.* 1552, 1 *t. c.* 1158.

Item,

Item, Gif the libel and clame beis admittit to the perſewar's probatioun, and witneſſis, or uther probatioun beand led and deducit thairupon, the defendar ſall not be heard thairefter to uſe ony defence in the cauſe, be reſſoun of the admiſſioun of the libel to the perſewar's probatioun, quhilk is a ſufficient excluſion of the defendar fra his exceptiounis: And zit nevertheles, gif ony thrid perſoun, efter the uſing of the ſaid probatioun, and at anc time befoir the geving of the ſaid ſentence, compeiris, and deſyris to be admittit for his interes, he ſchawand his interes, aucht and ſould be admittit *in ſtatu in quo cauſa tunc eſt*, and ane copie of the principal ſummoundis ſould be gevin to him, with ane term and lauchful day to propone, and give in all his peremptour exceptiounis and defenſis, 12 *Julij*, 1542, *The Laird of* Glenkindie *contra Lord* Erskine's *tenentis*, 2 *t. c.* 121. And it is to wit, that na thrid perſoun compeirand and deſireand to be admittit for his interes in ony actioun betwix twa parties, ſould be admittit, gif the cauſe be alreadie concludit betwix the principal parties. 18 *Julij*, 1541, *Laird* Culluthie *contra Laird* Balwerie, 2 *t. c.* 221.

C. XXII. Anent proponing of exceptiounis efter the libel is admittit to probatioun.

EFTER the libel or clame is admittit to the perſewar's probatioun, the defendar ſould not be heard to propone ony peremptour exceptioun aganis the ſamin, 21 *Maij*, 1541, *Lord* Maxwell *contra Lord* Sanquhar, 2 *t. c.* 34. For the defendar not compeirand at the firſt term, the ſummoundis ſould be admittit to the perſewar's probatioun, and ane term aſſignit to him thairto: And gif the defendar not beand *contumax* at the firſt term, compeiris at the ſecund term of probatioun, he may be heard to propone all and haill his exceptiounis, als weill declinatouris of the Judge, as utheris, 10 *Decemb.* 1541, David Davieſon *contra Laird of* Buchanan, 2 *t. c.* 227. *Item*, Efter that the libel is admittit to the perſewar's probatioun, and ane term aſſignit to him thairto, in abſence of the defendar, beand *contumax*, and not compeirand in the cauſe, the defendar compeirand in the ſecund or thrid term of probatioun, and purgeand the cauſe of his contumacie, aucht and ſould be heard to uſe and propone all his lauchful defenſis, als weill dilatouris as peremptouris, gif the perſewar, at the ſaid firſt term of probatioun, producit na witneſſis, nor uſit ony uther probatioun for preiving of his libel: Bot gif thair was writ or witneſſis producit be him in the firſt term, *pro prima dilatione*, the defendar ſall not be heard in the ſecund term, nor thairefter, to propone ony exceptioun, dilatour nor peremptour, bot onlie aganis the probatioun; becauſe, gif the defendar had bene preſent at the firſt term, and had uſit na defence, bot had ſufferit the libel to be admittit to probatioun, he ſould not be heard in the ſecund term, or thairefter, to propone ony exceptioun aganis the libel; and thairfoir, gif he was *contumaciter* abſent at the firſt term, he ſould not be admittit to uſe ony defence thairefter, utherwayis the defendar, beand *contumax*, ſould be of ane better eſtait and conditioun than gif he had not bene *contumax*. 3 *Mart.* 1541, Andro Lourieſtoun *contra* William King, 2 *t. c.* 68.

C. XXIII. Exceptiounis ſould firſt be proponit aga-

THE defendar ſould firſt propone his exceptioun aganis the breve or ſummoundis, gif he ony has to be proponit, to evacuat, annull, or caſs the ſamin, and thairefter he may propone and alledge his

nis the ſummoundis, and thairefter contrare the clame.

his exceptiounis and defenſis aganis the perſewar's clame; for gif he firſt proponit ony exceptioun aganis the clame, he, be the proponing thairof, affirmis the breve and ſummoundis to be relevant and uncaſſable, and thairfoir ſall not be heard to propone or alledge thairefter ony exceptioun aganis the ſamin, *Lib.* 1. *c.* 13. Becauſe the defendar, gif he can, or will, may propone exceptiounis dilatouris aganis the ſummoundis, gif he may find ony advantage thairby, alledging that the ſamin is not relevant, or that he is not lauchfullie ſummoundit, and thairupon ask dome in court: And gif his alledgeance beis fund relevant, he ſall pas quyte for that time and inſtance, until he be of new ſummoundit agane. *Mod. ten. cur. c.* 4.

C. XXIV. ANENT exceptiounis to be maid aganis the King's brevis. *Ja.* I. *fol.* 20. *act.* 128. 6 *Martij*, 1429.

C. XXV. Exceptiounis aganis the libel.

EXCEPTIOUNIS of ineptitude of the libel may be alledgit and proponit in ony time or part of the pley, or zit efter the geving of the decrete; and mair attour, ſuppois it be pretermittit in the firſt inſtance, it may be proponit at ony time in the ſecund, conform to the commoun reule, *Non allegata allegabo, et non producta producam.* 1 *Decemb.* 1541, 2 *t. c.* 42.

C. XXVI. He that proponis frivolous exceptiounis ſould find ane borgh.

IT is leaſum to ony partie pleyand in judgment befoir the Juſtice, Schiref, or ony uther Judge quhatſumever, to propone his lauchful and reſſonabill exceptiounis, and ask dome, ward, or interloquutour thairupon, without finding of ony borgh to the Judge thairfoir; for utherwayis mony puir men ſould periſh for fault of juſtice; becauſe thay durſt not find ane borgh upon all lauchful exceptiounis alledgit be thame, for fear and dreadour of tinſal, and paying amerciament of court: Bot gif ony partie propone and alledge ony fraudful, frivelous or deceiptful exceptioun, thairby to ſtop the court, and delay juſtice, the Judge ſould not admit the ſamin, except the proponer thairof find a ſufficient borgh that he ſall ſufficientlie preive the ſamin, and failzieing thairof to pay ane unlaw of court. *Mod. ten. cur. c.* 33. *Quon. attach. c.* 18.

C. XXVII. QUHAT exceptiounis ſould be admittit or repellit. *Ja.* I. *fol.* 9. *act.* 60. *in fine.* 11 *Martij*, 1425.

C: XXVIII. Exceptiounis omittit in the firſt inſtance, may not be proponit in the ſecund.

GIF ony perſoun compeirand perſonallie, or be his procuratour, in the firſt inſtance, befoir the geving of ony decrete aganis him, wilfullie and fraudfullie omittis to propone ony exceptioun, he ſall not be heard in the ſecund inſtance to propone the ſamin alledgeance aganis the executioun of the ſaid decreit; as gif ane decreit arbitral betwix twa parties wer pronuncit, and ane of the parties ſummoundit the uther to heir and ſé letteris gevin for fulfilling thairof, and the partie that is ſummoundit compeir, and alledge nathing in the contrare, and ſwa the letteris beis gevin to the effect foirſaid, he ſall not be heard efterwart to alledge that he had alreadie fulfillit and obeyit the ſaid decrete. 18 *Mart.* 1551. 9 *Mart.* 1552, David Crawfurd *contra* Gelis Cuninghame. 17 *Junij*, 1566, James Hamiltoun *contra Abbot of* Kelſo, 1 *t. c.* 706.

GIF

C. XXIX. He quha has renuncit all proponing of exceptiounis, sould not be heard to propone ony thairefter.

GIF ony persoun bindis and oblissis him to content and pay ony sowme of money, or to do ony gratitude, gude deid, or pleasour, to ane uther, and renuncis, for him and his airis, all exceptioun or defence, quhilk be law or consuetude may be proponit or alledgit be him in the contrare, he sould be compellit to fulfil and obey the said band and obligatioun, and sall not be heard to propone ony exceptioun, or rais ony defence in the contrare, for ony cause precedand or followand the said band; becauſe he, renunceand the samin of befoir, prejudgit himself and his airis thairanent in all time cuming. 23 *Feb.* 1565, Alexander Home *and* George Home *contra the gudeman of* Humbie, 1 *t. c.* 890.

C. XXX.

THAT all nullities be ressavit, and have proces, be way of exceptioun or reply. *Mar. R. fol.* 163. *act.* 16. 20 *Junij*, 1555.

C. XXXI. Exceptioun contrare to the libel sould be repellit.

GIF the persewar libellis, that he was in lauchful possessioun of ony landis, past memorie of man, and the defendar alledge that he was in lauchful possessioun of the samin landis past memorie of man, the exceptioun sould be repellit as contrare to the libel; becauſe all exceptiounis, articlis, replyis, or quhatsumever uther answer or defence, intentit or proponit be the uther partie, aucht and sould be repellit, gif thay be contrare to the libel. 9 & 13 *Feb.* 1541, *The burgh of* Selkirk *contra the tenentis of* Kelso, 2 *t. c.* 58.

C. XXXII. Exceptioun of compensatioun.

COMPENSATIOUN beand objectit be the defendar, be way of exceptioun, in ony actioun or cause, sould not be admittit, albeit it be *de liquido in liquidum*; becauſe, be the law of this realme, na exceptioun of compensatioun sould be admittit, bot actioun sould be reservit to the proponar thairof, to persew for the debt auchtand to him, as accordis of the law. 5 *Maij*, 1543, *The Quene* contra *the Bischop of* Aberdene, 2 *t. c.* 141.

C. XXXIII. *Exceptio rei judicatæ, i. e.* of dome and sentence alreadie gevin in the cause.

ANE actioun and cause beand intentit and persewit aganis ony persounis, quhilkis ar sub-tenentis, and bruikis the landis or possessiounis be the richt of ane uther, thay aucht and sould be *simpliciter* assoilzeit, gif thay alledge and preive sufficientlie that the principal tenent, with quhais richt thay ar clad, and be quhais titil thay bruik and joise the samin landis, was callit be the persoun persewar in the samin cause, and in the samin maner, and was assoilzeit thairintill, *quia, ratione unius & ejusdem juris, tenens & subtenens habentur pro una & eadem persona.* 16 *Mart.* 1519, James Hamiltoun *contra* Marion Reid, 1 *t. c.* 395.

C. XXXIV. Divers kindis of essonzies.

IT is leasum to the persewar, or to the defendar, not compeirand at the day of the summoundis, to use essonzies and excusis for thair non-compeirance; the quhilk beand ressonabill sould be ressavit and admittit be the Judge, *De jud. c.* 12. And it is leasum to the parties to use divers kindis of essonzies, of the quhilk sum cumis be ressoun of infirmitie, and sum utherwayis. Essonzies of infirmitie; sum cumis of sudden infirmitie, and uther sum of auld seiknes, callit *ressеantiza*, quhilk is ane greit and grivous seiknes, quhairwith ony man is troublit and vexit ane lang time, *Lib.* 1. *c.* 10. Gif ony persoun essonzies himself be ressoun of bodilie seiknes, or

bed-evil, in the ſamin town or place quhair the pley and actioun is intentit, thair ſall be four ſufficient perſounis ſend to him be the Judge, to ſé gif the ſaid eſſonzie be fraudfullie alledgit be deceipt, or not: And gif it be fund that the ſamin is alledgit throw fraud and deceipt, the partie quha uſis the ſamin ſall inſtantlie compeir in judgment, or than tyne the actioun, and richt ſall proceid; and gif utherwayis it be fund of veritie, he that uſis the ſamin ſall have ane delay of fourtie dayis, until he be convaleſcit and haill of his ſeiknes. *Lib.* 1. *c.* 10. *De jud. c.* 52.

C. XXXV. Eſſonzie be reſſoun of abſence furth of the realme.

GIF ony perſoun be eſſonzeit be reſſoun he is bezond the water of *Forth*, or the water of *Spey*, or furth of the realme, and the ſamin excuſe happin to be admittit, the ſpace of fourtie dayis, or ſixtie dayis, ſall be gevin and grantit to him that is eſſonzeit, in the quhilk ſall not be comptit the day of the proponing of the excuſe: And gif he that proponit the foirſaid eſſonzie dois not compeir within the ſaid ſpace, the ſpace of uther fourtie dayis, (*Purv.*) or threſcoir dayis, ſall not be grantit to him thairefter, bot allanerlie the lauchful ſpace and time be the law, of dayis of eſſonzies, quhilk uſis to be gevin and grantit to thame that ar preſent. *Lib.* 1. *c.* 10. *De jud. c.* 52.

C. XXXVI. Eſſonzie of the King's ſervice.

ANE may lauchfullie eſſonzie himſelf be reſſoun of the King's ſervice; for gif he preivis in judgment that he was in the King's ſervice, at the general or ſpecial command of the King, the ſamin excuſe ſall be reſſavit and admittit, and the actioun or pley ſould ceis and ſleip, without ony certane day, in the ſamin form, force and effect as it was of befoir, until the time he be returnit fra the ſaid ſervice, *Lib.* 1. *c.* 10. Bot gif he was ſummoundit befoir he was commandit, or enterit in the King's ſervice, and the ſamin is ſufficientlie provin be the perſewar, the defendar, notwithſtanding of the ſaid eſſonzie and excuſe, aucht and ſould anſwer, *De jud. c.* 85. And ſiclike, thay quha ar continuallie in the King's ſervice, and domeſtical perſounis, may not uſe the ſaid eſſonzie of the King's ſervice; for tuiching thame, the commoun courſe and ordour of the law ſould be keipt and obſervit, *Lib.* 1. *c.* 10. And likewayis, gif he, of his awin fré will, without command of the King, has paſt and thruſt himſelf into the King's ſervice, in fraud and hurt of ane uther, he ſall not bruſk nor joiſe the benefit of the ſaid excuſe, except he have, and ſchaw in judgment, the King's writing, teſtifying him to be, or to have bene, in the King's ſervice; for it is generallie to be obſervit, quhen ony of the King's liegis ſchawis and produeis the King's writing, grantit to him be ſpecial grace, for ane leaſum and reſſonabill cauſe, the ſamin ſould be reſſavit and admittit; for in civil actiounis and cauſis ſic writingis concerning the King's will and ordinance ſould have the ſtrenth and effect of ane law. *De jud. c.* 85.

C. XXXVII. Eſſonzies of the perſewar and defendar.

IN actiounis of injuries, damnage, and challenge of landis, als mony eſſonzies and delayis ſould be grantit to the perſewar as to the defendar. *Leg. burg. c.* 108.

C. XXXVIII. Eſſonzies of burgeſſis.

THAIR is na eſſonzies within burgh, betwix burges and burges, bot

bot of landis challengit, or of seiknes sufficientlie provin be witnessis, or of the King's service, or of absence at fairis. *Leg. burg. c. 95. Quon. attach. c.* 31.

C. XXXIX. Essonzies of ane warrand.

GIF ony man be callit as warrand in ony actioun or cause, he may use essonzies and excusatiounis conform to the law. *Lib. 1. c.* 22.

C. XL. Essonzie of persounis indytit to the justice air.

HE that is indytit to the Justice air, may use na kind of essonzies (as he quha is summoundit and attachit befoir the Justice), bot allanerlie of tinsal of his landis and heritage, or for sum sudden cause arysand of new, quhilk of befoir micht not have bene foirsene; the quhilk essonzies sould be instantlie provin, ather be ressoun of the King's service, the quhilk sould be provin be the King's writing, or the essonzie of infirmitie of bed-evil sufficientlie provin to be of veritie; for gif it be found that the samin essonzie of seiknes is alledgit for fraud and guyle, he for quhom the samin is usit, and also his pledgis, sall be in the King's will; and he that is indytit sall be chargit to compeir on a new day, in the samin form as of befoir. *Stat. 1. Rob. Br. c. 4. Stat. 2. Rob. Br. c. 5. Quon. attach. c. 77. Assis. Reg. Dav. c.* 18.

C. XLI. How the defendar may be essonzeit befoir the Justice.

IT is statute and ordanit, that he quha is attachit and summoundit befoir the Justice, to underly the law for ony crime or trespas laid to his charge, sall use na kind of essonzie or excusatioun befoir the Justice, bot allanerlie be ressoun of the King's service, the quhilk sould instantlie be provin be the King's writing and letter; or be ressoun of infirmite, or bodilie seiknes; the quhilk excuse sall not be ressavit for ane essonzie, bot gif incontinent in judgment, befoir the Justice, inquisitioun be tane, and it be found be ane gude assise, that the seiknes is sic, without fraud, that he quha is essonzeit may not compeir: And gif it be utherwayis fund be the assise, thay sall be amerciat, baith the defendar that is essonzeit, and his borgh, for default of his entrie; and thairefter he that sould be essonzeit sall be chargit to compeir at ane new day, in the samin maner as he sould have done of befoir. *Stat. Rob. Br. c. 5. Ex lib. Scon. & Galbraith.*

C. XLII. Essonzie of Procuratouris.

GIF ony partie lauchfullie makis and constitutis ane Procuratour in ony actioun or cause, na essonzie sould be admittit be ressoun of the persoun constituent allanerlie, nor zit in respect of him and his Procuratour baith togidder, bot allanerlie sic delayis and essonzies sould be ressavit be the Judge, quhilk ar alledgit or proponit be ressoun of the Procuratour's persoun. *Lib. 3. c.* 13.

C. XLIII. Essonzie of pledgis.

GIF ane be borgh and pledge for ane uther, to enter to law at ane certane day, baith the partie and the pledge may use essonzies, gif thay pleis: And gif ony ane of thame use ane lauchful essonzie, the samin is sufficient for thame baith. *Quon. attach. c.* 11. *in fine.*

C. XLIV. Essonzie of suitoris.

ILK suitor of court may use lauchful essonzies in the Schirefcourt,

court, or ony uther court quhair he aucht commoun ſuit. *Quon. attach. c.* 17.

C. XLV. Eſſonzie of ſtehalderis.

IT is leaſum to the parties pleyand in judgment, and utheris, to uſe eſſonzies, als weill in heid-courts, as in ony uther courtis: Bot gif ony frehalder be infeft for thré ſuitis zeirlie, at his over-lord's heid-courtis, he may uſe na eſſonzie in ony of the ſaid heid-courtis, albeit uther frehalderis, utherwayis infeft, may uſe lauchful and reſſonabill delayis and eſſonzies; for gif he that is auchtand to his over-lord, be zeir allanerlie, thré ſuitis at thré heid-courtis, micht uſe ane eſſonzie, ſwa conſequentlie he ſould mak na ſervice zeirlie to his Lord, the quhilk wald be aganis law, reſſoun, and his infeftment of halding. *Mod. ten. cur. c.* 13. *Quon. attach. c.* 17.

C. XLVI. Quha may not uſe eſſonzies.

GIF twa or ma perſounis paſs to the knawlege of ane inqueiſt for declaring of the veritie, anent ony debait or contraverſie betwix thame, nane of thame thairefter may uſe ony eſſonzie or delay to ſtop the aſſiſe, quhy the ſamin ſould not proceid fordwart, *Lib.* 4. *c.* 59. *Quon. attach. c.* 42. *Item*, It is ſtatute and ordanit, becauſe divers and ſindrie perſounis ar delayit be unlauchful and unjuſt eſſonzies maid be the partie adverſar, that in time cuming na perſoun quha compeiris in judgment perſonallie, and maliciouſlie abſentis himſelf, may uſe na eſſonzie for him that ſamin day; for ſic eſſonzies, done in fraud and hurt of utheris, and in hindrance of juſtice, ſould not be reſſavit or admittit. *Stat.* 2. *Rob. Br. c.* 26.

Anent probatioun.

C. I. The perſewar may preive his clame, and the defendar his exceptioun.

HE that perſewis ony man for ſilver, landis, or ony uther movabilis, aucht and ſould lauchfullie preive his libel and clame to be relevant: And ſiclike, gif the defendar, in ony actioun or cauſe intentit or perſewit aganis him, propone or alledge ony exceptioun or defence aganis the libel or clame, the ſamin beand fund relevant be the Judge, ſould be provin be the defendar as accordis of the law, *De except. c.* 19. *Mod. ten. cur. c.* 4. And gif the libel or clame is admittit to the perſewar's probatioun, and ane term aſſignit to him to that effect, and he compeiris not at the ſaid term of probatioun, the partie defendar compeirand at the ſamin; or gif he compeiris, and preivis not lauchfullie his libel, he, for his abſence, ſall remane in the King's will and mercie, and the defendar ſould be *ſimpliciter* aſſoilzeit fra the libel and clame perſewit aganis him. And ſiclike, gif ane exceptioun be admittit to the defendar's probatioun, to be provin be him at ane certane day, and the perſewar compeirand at the ſamin day, the defendar compeiris not, or compeirand failzies in probatioun of his exceptioun, then the defendar ſall be, be reſſoun of his abſence, in the King's mercie, and condemnatour ſall be gevin aganis him, in favouris of the perſewar, conform to his libel and clame, *Stat.* 2. *Rob. Br. c.* 35. *Stat. Will. R. c.* 22. *De maritag. c.* 10. *Mod. ten. cur. c.* 5, & 10. And gif baith the parties happinis to be abſent at the day of probatioun, thay ſould be unlawit, and chargit be the Judge to compeir

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at the nixt court, the ane to uſe his probatioun, and the uther to heir and ſé the ſamin reſſavit and deducit. *Mod. ten. cur. c.* 10. *De maritag. c.* 11.

C. II. *Probatio aliquando defertur reo.*

GIF ony Lord perſewis or accuſis, civillie or criminallie, in his awin court, his awin man, it ſall not be grantit to him to preive with witneſſis his clame or actioun, gif his man, quha is perſewit, is content, and offeris him readie to acquyte him, and make his purgatioun of that thing quhilk is laid to his charge be his awin aith, and be twelve men beand leill and unſuſpect. *Quon. attach. c.* 15. *Ex lib. Purv.*

C. III. Of the defendar failzieand in the proving of his exceptioun.

ANE peremptour exceptioun beand proponit be the defendar, and admittit to his probatioun, gif he failzies in preiving thairof, the perſewar's libel or clame is haldin as ſufficientlie provin; and thairfoir, gif it be ane actioun of ſpuilzie, the avail and quantitie is referrit to the aith of the perſewar. 7 *Mart.* 1533, Jaſper Cranſtoun *contra* George Home, 1 *t. c.* 452.

C. IV. Probatioun of reply concerning health and ſanitie.

GIF ane man, as aſſignay or executour, perſewis ane uther, and the defendar alledge, that the aſſignatioun, or teſtament, gevis him na actioun to perſew, becauſe the maker thairof was *incompos mentis, et furioſus*, the time of the making thairof; and the perſewar reply, that he was *compos mentis* at the ſamin time; *actori alleganti ſanitatem incumbit probatio*, 2 *Junij*, 1563, Alaſter Macknab *contra* Andro Toſcheoch. 16 *Julij*, 1503, Thomas Laird *contra* James Clerk, 1 *t. c.* 810.

C. V. Anent probatioun *hinc inde*, in actioun of ſpuilzie.

ANE beand perſewit for ſpuilzie of certane gudis and geir, gif he deny the ſpoliatioun of ane part, and alledge ane peremptour exceptioun, tuiching the reſt thairof, quhilk beand fund relevant and admittit to his probatioun, the Judge ſould aſſigne ane term of probatioun *hinc inde*, *viz.* to the perſewar to preive his ſummoundis concerning the gudis that ar denyit, and to the defendar to preive his exceptioun tuiching the remanent punctis of the libel. 19 *Maij*, 1534, 1 *t. c.* 983.

C. VI. Anent probatioun *hinc inde*, in reductioun of retouris.

IN ane actioun and cauſe of reductioun of ane retour, gif the perſewar alledge him to be narreſt and lauchful air to the deid, and thairfoir the perſounis of inqueiſt to have done wrang, in ſerving and retouring of ane uther as air to him; and the defendar alledge himſelf to be narreſt and lauchful air, and thairfoir the aſſiſe to have done richt in ſerving of him, conform to his clame; the ſamin ſould be referrit to thair probatioun, *hinc inde*. *Ult. April.* 1569, Ro. Cauldwall *contra* John Cauldwall, 1 *t. c.* 870.

C. VII. Anent probatioun of the exceptioun *litis pendentis*.

EXCEPTIO litis pendentis, that is, quhen ane alledgis proceſs to be dependand for the ſamin thing befoir ane uther Judge, and betwix the ſamin parties, albeit it be dilatour, zit, beand admittit to probatioun, ſould not be neceſſarlie provin inſtantlie, bot ane competent day and term ſould be aſſignit for probatioun thairof. 4 *Decemb.* 1550, 1 *t. c.* 1125.

C. VIII. Of the perſewar refuſand to preive his libel.

GIF the defendar deny the libel, and the perſewar, or his Procuratour, refuſis to preive the ſamin, the defendar aucht and ſould be *ſimpliciter* aſſoilzeit thairfra, 3 *Mart.* 1550, 1 *t. c.* 1130. Attour, ane clame or libel beand intentit *negativè*, and ane exceptioun proponit be the defendar aganis the ſamin *affirmativè*, the exceptioun ſould be admittit to probatioun. And ſiclike, gif the libel be affirmative, and the exceptioun negative, the libel ſould be admittit to probatioun. 24 *Decemb.* 1554, Charterhous *contra* Kirkmichael, 1 *t. c.* 1184.

C. IX. Of him that failzies to preive ony ane of divers exceptiounis admittit to his probatioun.

DIVERS exceptiounis, or uther alledgeances, beand admittit to probatioun, quhairof ane is ſufficient to obtene victorie in the cauſe, gif the partie defendar preivis the ſamin exceptioun, or alledgeance, ſufficientlie, he ſould be aſſoilzeit fra the actioun intentit aganis him, albeit he failzie in probatioun of the remanent. 20 *Julij*, 1557, *Biſchop of* Dumblane *contra* Jonet Chiſholme, 1 *t. c.* 1210.

C. X. Anent probatioun of ane reply, quhilk ſtoppis or delayis the principal cauſe.

GIF ony man perſewis ane actioun aganis ane uther, and, for eliding of the exceptiounis proponit be the defendar aganis him, dois propone ony reply, and is compellit to preive the ſamin, the probatioun of the quhilk dois ſtop and ſtay the perſute of the principal cauſe; gif he preive the ſamin ſufficientlie, the defendar, befoir he be heard to defend, be himſelf or his Procuratour, in the principal cauſe, aucht and ſould content and pay to the ſaid perſewar the expenſis deburſit and ſuſtenit be him in preiving of the ſaid reply. 22 *Jan.* 1563, Allaſter Maknab *contra* Andro Toſcheoch, 1 *t. c.* 1309.

C. XI. How mony termis ſould be grantit for preiving of ane peremptour defence, or libel.

ANE term allanerlie of probatioun ſould be gevin to ony partie for preiving of ane peremptour exceptioun, reply, or ony uther peremptour alledgeance: And gif the witneſſis, or ony ane of thame quha wer ſummoundit, compeiris not, farder diligence ſould be grantit to him aganis thame, with letteris to ſummound and charge thame to compeir, under greiter panis; the quhilk gif thay failzie to do, thay may be denuncit rebellis, and put to the horn, and letteris of captioun direct aganis thame: Bot it is to be underſtuid that the partie ſould have na ma witneſſis nor thay quhilk wer firſt ſummoundit, nor na diligence ſould be grantit and gevin to him, bot allanerlie aganis the witneſſis quha wer firſt ſummoundit agane the firſt term, and compeirit not, *Ult. Feb*, 1541, *The Laird of* Craigiehall *contra* Glenbervie, 2 *t. c.* 66. Nevertheleſs the perſewar ſould have thré termis for preiving of his libel, and alſwa for probatioun of ony peremptour reply aganis him, notwithſtanding that ane term allanerlie is gevin to the defendar for preiving of a peremptour exceptioun, 19 *Julij*, 1553, *Priores of* Cauldſtreme *contra Sir* Andro Ker, 2 *t. c.* 248.

C. XII. Of a libel conſavit *negativè*.

GIF the perſewar libellis *negativè*, *onus probandi affirmativum incumbit reo.* 17 *Mart.* 1541, Agnes Lindſay *contra* Jonet Auchinleck, 2 *t. c.* 81.

C. XIII. Nane ſould be aſtrictit to

GIF ony man libellis in his clame or libel, or alledgis in his exceptioun, divers and ſindrie thingis conjunctlie, of the quhilk ony ane is

is ſufficient for victorie in the cauſe, he ſould not be compellit or aſtrictit to preive ony bot that allanerlie. 11 *Martij*, 1546, *Sir* Johne Campbell *contra Lord* Drummound, 2 *t. c.* 181. ſuperfluous probatioun.

C. XIV. Probatioun of a reply in actiounis of deforcement.

GIF ony perſoun be callit for deforcement of ane Officiar, in executioun of his office, in poinding of ony gudis or geir, and alledgis that he did na wrang in ſtopping of the ſaid Officiar, becauſe the gudis and geir pertenit to his tenentis, ſervandis or freindis, as thair awin proper gudis and geir, quha, the time of the ſaid poinding, came in preſence of the ſaid Officiar, and maid faith thairupon, and ſwa he aſſiſtand his tenentis, ſervandis or freindis, in halding and retening of thair awin gudis and geir, did na wrang thairintill: And gif the perſewar alledge, be way of reply, and offer him to preive that the gudis and geir pertenit to the defendar, as his awin proper gudis and geir; the ſamin reply is relevant, and aucht and ſould be admittit to his probatioun. 29 *Julij*, 1566, Andro *and* William Keiris *contra Lord* Zeſter, 1 *t. c.* 851.

C. XV. Of him that failzies in probatioun of ane exceptioun of falſet.

HE that failzies or ſuccumbis in preiving of ane exceptioun of falſet proponit be him, may not thairefter uſe or alledge exceptioun of payment, or ony uther defence in that inſtance 5 *Feb.* 1540, 2 *t. c.* 19.

C. XVI. Exceptioun dilatour ſould be provin inſtantlie.

ANE exceptioun dilatour ſould be provin inſtantlie without delay, except the proponar thairof ſchaw and alledge ane reſſonabill cauſe quhairfoir ane delay ſould be gevin to him for preiving of the ſamin exceptioun. 27 *Julij*, 154-- George Douglas *contra* Olivare Sinclare, 2 *t. c.* 154.

C. XVII. Probatioun ſould not be reſſavit efter concluſioun of the cauſe.

EFTER that it is concludit in the cauſe, be aſſignatioun of a term to pronunce and give ſentence in the mater, the Judge may not reſſave ony farder probatioun at the inſtance of ather of the parties, for preiving of thair intent; becauſe concluſioun in the cauſe, and term being aſſignit to give ſentence, makis excluſioun of baith the parties anent ony farder uſing of probatioun in that inſtance, and ſpeciallie of witneſſis. 16 *Feb.* 1540, Andro Burrell *contra* Thomas Dudingſtoun, 1 *t. c.* 650.

C. XVIII. The libel ſould not be admittit to probatioun, gif ony exceptioun is alreadie admittit to the defendar's probatioun.

ALL ſentences and decretis gevin be ane Judge, ar of nane avail, and ſould be reducit, gif he admittis the libel to the perſewar's probatioun, efter that he has admittit ane exceptioun to the probatioun of the defendar, and diligence done be him anent the preiving thairof; becauſe, the exceptioun beand firſt admittit, and ſufficientlie provin, or at the leaſt lauchful diligence done be the defendar thairin, and ſchawin to the Judge at the term aſſignit thairto, dois tak away the libel, or, at the leiſt, ſould ſtop the ſamin to be admittit to the perſewar's probatioun: And thairfoir the Judge ſould proceid and give farder diligence to the defendar, upon the witneſſis ſummound-it, and not compeirand, befoir he give condemnator or abſolvitor, according to the probatioun and diligence done be him; be reſſoun, the defendar, ſufficientlie preivand his exceptioun, aucht and ſould be *ſimpliciter* aſſoilzeit fra the clame and petitioun of the perſewar: And gif he failzies in probatioun thairof, in not doing diligence, or uther-

utherwayis, he aucht and ſould be condempnit conform to the petitioun of the perſewar. 5 *Maij*, 1563, *Laird of* Kinhilt *contra Laird of* Knokdow, 1 *t. c.* 809.

C. XIX. Na defence ſould be admittit to the defendar, beand contumax.

GIF the perſewar compeiris be himſelf, or be his Procuratour, at the day of compeirance contenit in his ſummoundis, and the defendar be contumax and compeir not to defend, the Judge ſould not aſſigne ane day to the defendar to give in and produce his defenſis, bot aucht and ſould admit the libel or clame to the perſewar's probatioun, and aſſign him ane day to that effect, and wairn the partie defendar to compeir the ſamin day, to heir and ſé the probatioun reſſavit, led and deducit. 2 *Julij*, 1563, Johne Mackinteir *contra* Alexander Kennedie, 1 *t. c.* 1016.

C. XX. The term of probatioun ſould be reſſonabill.

THE Judge aucht and ſould aſſign to the parties ane reſſonabill day of probatioun, to compeir and perſew, or defend in the cauſe, according to the diſtance of place, time of the zeir, and uther circumſtances; and gif he utherwayis do, the proces and ſentence is of nane avail, and may be reducit, ſpeciallie gif ony thing be objectit aganis the ſchortnes of the time or day. 10 *Decemb.* 1564, William Kinloch *contra Baillies of* Perth, 1 *t. c.* 1018.

C. XXI. Na defence ſould be reſſavit efter the term aſſignit to the partie to give in all his defenſis.

ANE peremptour term beand aſſignit be the Judge to ony partie, to give in all his evidentis and writtis, quhilk he wald uſe for probatioun of his intent, togidder with all the defenſis quhilk he will uſe in the cauſe; gif he gevis not in nor producis all at the ſamin term, he ſall not be heard to produce, or uſe, ony farder probatioun thairefter. 22 *Novemb.* 1533, 1 *t. c.* 1142.

C. XXII. Concluſioun in the cauſe ſtoppis farder probatioun.

EFTER concluſioun in the cauſe, na probatioun be witneſſis, nor utherwayis, aucht to be reſſavit, nather *ex ſuperabundanti*, nor utherwayis. Concluſioun in the cauſe is underſtuid to be maid, quhen ony term is ſet or aſſignit be the Judge to give ſentence; or quhen the partie renuncis farder probatioun; or quhen proteſtation is admittit aganis him, that he ſall not be heard to uſe ony farder probatioun. 18 *Feb.* 1546, 2 *t. c.* 153.

C. XXIII. The tenour of brint evidentis may be provin be witneſſis.

GIF ony man's evidentis be brint, *vi majori, cui non potuit reſiſti*, he may call and warn all parties havand interes thairanent, and may preive the amiſſioun and tinſal, togidder with the tenour and effect of the ſaidis evidentis, be divers famous witneſſis, that ſaw, red, and heard the ſamin. 17 *Decemb.* 1555, Elizabeth Scrimgeour *contra* Johne Ogilvie, 1 *t. c.* 697.

C. XXIV. Servitude of paſſage may be provin be writ or witneſſis.

GIF ony perſoun perſewis ane uther, alledgeand him to be moleſtit or troublit in carying of fewal, leiding of his cornis, or calling of his cattel throuch landis pertening to the defendar, and the ſummoundis be admittit to the perſewar's probatioun, he may preive be writ, or be witneſſis, that he was in the peciabill poſſeſſioun of the ſaid paſſage at the time of the moleſtatioun done to him, and of befoir. 18 *Jan.* 1552, *Priores of* Ecclis *contra* William Bruntfeild, 1 *t. c.* 711.

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C. XXV. Probatioun of poſſeſſioun of ane annuel-rent.

GIF ony kirkman perſew for ane annuel auchtand to him, he may preive be his rental-buik, and be witneſſis, that he was in peciabill poſſeſſioun, in up-taking of the ſamin, as a part of the patrimonie of his benefice. 24 *Julij*, 1550, 1 *t. c.* 1122.

C. XXVI. *Probatio ſcientia.*

GIF ony perſoun alledge ignorance of ony deid, and ane uther alledge knawlege of the ſamin, he that alledgis the knawlege ſould have the ſamin to his probatioun. 22 *Mart.* 1561, Iſobel Strang *contra tenentis of* Weſterbarnis, 1 *t. c.* 1285.

C. XXVII. Probatioun of propertie.

GIF ony man alledge landis to pertene to him in commountie, and ane uther alledge the ſamin to pertene to him in propertie, the alledgeance of propertie ſould be admittit to probatioun. 20 *Novemb.* 1567, *Laird of* Arnot *contra* Lochlevin. 28 *Junij*, 1568, *Laird of* Colpmalundie *contra Lord* Oliphant, 1 *t. c.* 1351.

C. XXVIII. Probatioun of doubill avail of mariage.

THE doubil avail of mariage of ony air aucht and ſould be provin be the zeirlie rental of his living, and be witneſſis examinat and admittit thairupon; be the retour and extract thairof drawin furth of the chancellarie, beirand that he is ſervit as narreſt and lauchful air to his predeceſſour, of ony landis haldin be ſervice of ward and releif; be ane contract of mariage compleitit and ſolemnizat betwix him and ane uther woman; be gift and diſpoſitioun of his mariage maid to the perſewar; be the procuratorie of requiſitioun, and be the inſtrument of intimatioun, and requiſitioun of the perſewar's richt and titill. 15 *Junij*, 1568, *Lord* Forbes *contra Laird of* Boyne, 1 *t. c.* 1355.

C. XXIX. Probatioun of preſence or abſence furth of the realme.

GIF ony perſoun alledge that he was furth of the realme at ony ſpecial time, and it be anſwerit that he was within the realme at the ſamin time, his being within the realme ſould be admittit to probatioun. 27 *Maij*, 1569, *Perſoun of* Cleiſh *contra Tenentis of* Caſtelfeild, 1 *t. c.* 1370.

C. XXX. Service of ane air preivis the predeceſſour's deceis.

GIF ony perſoun be ſervit narreſt and lauchful air to his predeceſſour, the ſamin ſervice, ſtandand unreducit, preivis ſufficientlie the ſaid predeceſſour's death. 17 *Mart.* 1541, Agnes Lindſay *contra* Jonet Auchinleck, 2 *t. c.* 82.

C. XXXI. Probatioun of halding blanche ferm.

BLANCHE halding of landis may not be provin be ane retour of the ſaid landis, makand mentioun that the ſamin ar haldin blanche ferm; bot the ſamin ſould be provin be chartour and ſaſine of the ſaidis landis. 16 *Junij*, 1542, *King's Advocate* contra *Laird of* Houſtoun, 2 *t. c.* 144.

C. XXXII. Probatioun of tolerance.

ANE decreite of removing beand gevin aganis ony perſoun, and thairefter he be ſufferit, be licence and tolerance of the obtenar thairof, to ſit ſtill, and labour the ground, to ane certane term or time, and it happin thairefter ony queſtioun or contraverſie to ariſe tuichand the ſaid pactioun of licence or tolerance, the ſamin ſould not be provin be witneſſis, bot be writ. 5 *Decemb.* 1534, 1 *t. c.* 992.

C. XXXIII. Of him that dois na diligence for preiving of his intent.

ANE term beand aſſignit be the Judge to ony partie, for probatioun of the clame, exceptioun, or ony uther alledgeance; gif the partie dois na diligence in deducing of the probatioun, according to the deſire of the Judge, the ſaid term and day of probatioun beand bypaſt, he ſould not be heard to uſe ony farder probatioun in the ſamin mater, *quia terminus probationis, ſuâ negligentiâ ab eo prætermiſſus, cedit ſibi pro termino.* 4 *Decemb.* 1509, 1 *t. c.* 150.

C. XXXIV. Probatioun of ane alledgeance contrare the libel.

THE defendar in ony actioun and cauſe, makand ony alledgeance direct contrare the clame or libel intentit aganis him, aucht not to have the ſamin to his probatioun, albeit he offer to preive the ſamin *per autentica ſcripta*; becauſe it is the ſtile and ordour of all courtis not to admit ony article, exceptioun or alledgeance direct contrare to the libel. 15 *Decemb.* 1529. 16 *Decemb.* 1528, *Erle of* Eglingtoun *contra* David Grahame, 1 *t. c.* 348.

C. XXXV. In actiounis of ſpuilzie, he that failzies in preiving of his exceptioun, affirmis the haill libel.

IN actiounis of ſpuilzie, or ony uther ſiclike, gif the defendar proponis a peremptour exceptioun aganis the libel or clame, and preivis not the ſamin ſufficientlie, he is haldin and repute to confeſs and grant the clame or ſpuilzie; becauſe he that failzies in the preiving of the exceptioun, is underſtuid to grant and affirm the libel. 7 *Mart.* 1533, 1 *t. c.* 962.

C. XXXVI. Of proteſtatioun grantit to ane partie be reſſoun of diligence not done be the uther.

GIF ane partie dois na diligence for ſatisfying of the term of probatioun, the ſamin term beand bypaſt, his partie adverſare ſould have and obtene ane proteſtatioun aganis him, *quod cedat ſibi pro termino*, 25 *Maij*, 1542. Bot the Lordis will not give proteſtatioun the firſt day of compeirance aganis the defendar, quha tuke to preive his exceptioun, 15 *Jan.* 1533. Becauſe, like as the perſewar may not be compellit to perſew the firſt day, ſwa the defendar may not be compellit to anſwer the firſt day. 6 *April.* 1549, Olivar Sinclar *contra Lord* Seytoun, 1 *t. c.* 1379.

C. XXXVII. Of him that failzies in probatioun of a peremptour exceptioun.

HE that proponis ane peremptour exceptioun or alledgeance, and ſuccumbis and failzies in the probatioun thairof, ſould not be heard nor admittit to propone ony uther, without his partie adverſar's conſent, albeit he propone the ſaid peremptour exceptioun, under proteſtatioun of all utheris his lauchful defenſis, and peremptour exceptiounis; and ſuppois in like maner ony uther peremptour exceptioun cum of new to his knawlege, efter the propoſitioun of the peremptour, in probatioun of the quhilk he failzies. 5 *Feb.* 1540, 2 *t. c.* 18.

C. XXXVIII. Circumductioun of the term of probatioun.

ANE term beand aſſignit for probatioun of the ſummoundis, clame, exceptioun, or ony uther alledgeance, and the partie doand na lauchful diligence for ſatisfying the deſire of the term, gif his partie adverſare mak his proteſtatioun, he ſall not be heard to uſe or produce ony farder probatioun for that term. 11 *Decemb.* 1533, Thomas Spens *of* Kilſpindie *contra* Alexander Ramſay *of* Balmuto, 1 *t. c.* 442.

C. XXXIX. Na man may pas fra that

GIF ony perſoun electis and uſis ane kind and maner of probatioun, he may not pas fra the ſamin, and uſe ane uther maner; as gif ane

ane tuik him to preive be witneſſis, he may not thairefter preive the ſamin be aith of the partie; or gif he tuik him to preive be aith of the partie, he may not preive the ſamin be witneſſis. 11 *Feb.* 1540, 2 *t. c.* 219.

kind of probatioun quhilk be has alreadie uſit.

TWA or ma perſounis beand infeſt in landis, and baith in poſſeſſioun thairof be vertue of thair infeftment, in all actiounis of doubill poinding the probatioun ſould be admittit to him that was firſt infeft. 29 *Mart.* 1561, Alan Dickſone *contra Dame* Jonet Levingſtoun, 1 *t. c.* 1253.

C. XL. Probatioun in the actioun of doubill poinding.

Of probatioun be aith.

JURAMENTUM calumniæ may be askit be the defendar in ony time of the pley, befoir the geving of the decrete, or term ſet to pronunce the ſamin, fra the perſewar; and ane competent day may be askit to be aſſignit to him to ſummound the perſewar to give his ſaid aith, gif he has juſt cauſe to deny ony exceptioun or alledgeance proponit be the defendar; and gif the Judge refuſis to do the ſamin at ony time, ather befoir, or efter leiding and deducing probatioun in the cauſe, the proces, decrete, and all that followit thairupon, is of nane avail, and may be reducit, 1 *Feb.* 1569, David Weymis *contra* John Forret *and the Proveſt of* Sanctandrois. The perſewar may ask *juramentum calumniæ* fra the defendar in ony time of the pley, befoir the geving of the ſentence upon the ſummoundis, or ony part thairof, perſewit or intentit be him, albeit he have not as zit verifyit his ſummoundis, or that part thairof, be probatioun of his libel: And gif ony man, as air to his predeceſſour, perſewis ane uther, and the defendar deſire him to verifie that part of his ſummoundis quhair he alledgis him to be air, the defendar, or his Procuratour, at the perſewar's inſtance, befoir ony verificatioun, may be compellit to give his aith thairupon. 28 *Junij*, 1542, *Laird of* Covingtoun *contra Laird of* Dundas, 2 *t. c.* 116.

C. I. At quhat time the aith *de calumnia* may be deſirit.

THE Advocatis and Foirſpeikaris in temporal courtis ſall ſweir. *Ja.* I. *fol.* 21. *act.* 139. 6 *Mart.* 1429.

C. II.

LETTERIS beand direct, to ſummound ony man to compeir and give his aith *de calumnia*, the ſamin aucht and ſould be execute aganis him perſonallie apprehendit be a Meſſinger, or Officiar of armis, and be nane uther. 3 *April.* 1559, *Sir* William Hamiltoun *contra* Adam Miller, 1 *t. c.* 1226.

C. III. How letteris, charging ony man to give his aith, ſould be execute.

ANE man ſummoundit to give his aith *de calumnia*, ſould compeir perſonallie, and give the ſamin, and may not ſend ane Procuratour to that effect; the quhilk gif he dois, the libel, exceptioun, or uther alledgeance, quhairupon he ſould have gevin his aith, aucht and ſould be haldin *pro confeſſo*. 5 *April.* 1557, *Lady* Lovat *contra Lord* Lovat, 2 *t. c.* 268.

C. IV. Na man ſould give his aith *de calumnia*, be ane Procuratour.

THE

C. V. How the defendar ſould give his aith.

THE defendar aucht and ſould, quhen he is requirit be the Judge to give his aith *de calumnia*, ſweir upon the haill libel, that he has juſt cauſe to deny the ſamin as it is intentit; and is not haldin of the law to give his aith upon everie particular heid of the ſamin. *Ult. Feb.* 1558, *Laird of* Drumquhaſſil *contra Laird of* Glenhegies, 1 *t. c.* 765.

C. VI. Baith the Procuratour and the partie aucht to give thair aith.

ALBEIT the defendar's Procuratour has alreadie gevin his aith *de calumnia* upon the punctis of the ſummoundis, nevertheles the defendar himſelf may be compellit to give his aith *de calumnia* upon the ſamin. 6 *Maij*, 1559, *Laird of* Drylaw *contra* Jonet Leſlie, 1 *t. c.* 1243.

C VII. Sumtime the perſewar may not be compellit to give his aith.

THE perſewar may not be compellit to give *juramentum calumniæ* upon the libel, efter that the ſamin is admittit to his probatioun, and witneſſis, or uther probatioun, reſſavit thairupon. *Item*, Gif he has anis gevin his aith upon the libel, he may not be compellit to give the ſamin agane at ony time thairefter in the ſamin inſtance. 4 *Feb.* 1558, *Laird of* Drumquhaſſil *contra Laird of* Glenhegies, 2 *t. c.* 277.

C. VIII. Aith of veritie.

JURAMENTUM veritatis ſould not be gevin efter that probatioun be deducit, led, and uſit in the cauſe. *Ult. Feb.* 1588, Drumquhaſſil *contra* Glenhegies, 1 *t. c.* 766.

C. IX. The defendar may paſs fra his exceptioun proponit, and refer the libel to the perſewar's aith.

ANE exceptioun or alledgeance beand proponit aganis the ſummoundis or clame, the proponer thairof may renunce and paſs fra the ſamin, it not beand as zit admittit to his probatioun, and refer the contentis of the principal ſummoundis, or clame, to the perſewar's aith of veritie. 10 *Decemb.* 1533, 1 *t. c.* 942.

C. X. Of the perſewar refuſand to give his clame to the aith of the defendar, ſummoundit to give the ſamin.

GIF ony partie perſewar referris the ſummoundis, or ony part thairof, to the aith of the defendar, and ſummoundis him to give his aith thairanent, gif he compeir readie to give his aith, and the perſewar refuſis to refer the ſamin to his aith, the defendar ſall not be compellit to anſwer ony farder, until his expenſis be payit to him. 20 *Jan.* 1533, Jonet Fairlie *contra Abbot of* Kilwinning, 1 *t. c.* 446.

C. XI. Of the defendar refuſand to give his aith.

GIF ony mater, queſtioun or contraverſie be referrit to the aith of the defendar be the perſewar, and gif the defendar refuſis to give his aith thairupon, or compeiris not at the term aſſignit to him to that effect, the ſamin aucht and ſould be referrit to the aith of the perſewar. *Pen. Novemb.* 1532, 1 *t. c.* 521. 12 *Decemb.* & 16 *Martij*, 1533, 1 *t. c.* 951.

C. XII. Of the partie warnit to give his aith with certificatioun.

HE that is warnit to give his aith *de calumnia*, with certificatioun, and he compeir not, he ſall be haldin *pro confeſſo*; gif he failzies to compeir at the ſamin day, to the quhilk he was warnit, he ſould be decernit *pro confeſſo*. 20 *Jan.* 1561, John Mure *contra* Pat. Cheyne, 1 *t. c.* 1275.

C. XIII. Of the perſewar, or his

GIF the perſewar, or his Procuratour, albeit he be the King's Ad-

Advocate, refuſis to give *juramentum calumniæ*, upon the punctis of his libel or clame, he aucht not to be heard to perſew the ſamin, and ſould be repellit *ab agendo* in all time cuming, and the defendar aſſoilzeit *ſimpliciter* without ony probatioun be writ or witneſſis, 15 *Novemb.* 1553. 12 *Junij*, 1555, *Quenis Advocate* contra Andro Drummond. And in like wayis, gif the perſewar, or his Procuratour, refuſis to give thair aith *de calumnia*, upon exceptiounis alledgit and proponit aganis thame, the defendar ſould be *ſimpliciter* aſſoilzeit. 11 *Feb.* 1555, Thomas Uchiltrie *contra Sir* James Hamiltoun, 1 *t. c.* 1170. Procuratour, refuſand to give thair aith.

EFTER reſſaving of the witneſſis, or litiſconteſtatioun maid be the perſewar, the defendar may not be compellit to give his aith of veritie upon the libel or ſummoundis, or upon ony alledgeance proponit be the perſewar. 1 *Julij*, 1574, *Erle of* Sutherland *contra Erle of* Cathnes. 21 *Jan.* 1575, *Laird of* Glenbervie *contra Laird of* Udnie, 2 *t. c.* 367. C. XIV. Aith of veritie may not be heard efter litiſconteſtatioun.

GIF the defendar be ſummoundit to compeir at ane certane day, to give his aith *de calumnia* upon the punctis of the ſummoundis intentit aganis him, and failzie to compeir at the ſamin day, he aucht and ſould be haldin *pro confeſſo*; except at the ſamin time and day of compeirance, ane reſſonabill excuſe be ſchawin and provin in his name, as gif it be provin be a teſtimonial ſubſcryvit be the Miniſter, Exhortar or Reidar, at his paroche kirk, with twa witneſſis, that he is bed-ſeik, and may not travel; for in this cais he ſould not be decernit to be haldin *pro confeſſo*, except the perſewar, be way of reply, alledge and preive him to be haill and feir, rydeand or gangand, and may do his leaſum biſſines. 25 *Mart.* 1568, *Abbot of* Balmerinoch *contra Laird of* Kinneir, 1 *t. c.* 869. C. XV. Of the partie failzieand to compeir to give his aith.

GIF the clame, exceptioun or alledgeance, in ony civil cauſe, be referrit to the aith of the partie, and it be ſufficientlie provin be ane teſtimonial of his Miniſter, Exhortar or Reidar, with twa witneſſis, that he is ſeik, impotent, or of greit age, ſwa that he may not travel, the Judge ſould paſs, or ſend his Clerk, as he pleiſis, upon the expenſis of him that is unhabile and ſeik, to pois and reſſave his aith upon ſic thingis as ar referrit to the ſamin. 23 *Feb.* 1536, Elizabeth Balcomie *contra Laird of* Cambo. 10 *Maij*, 1536. 4 *Feb.* 1558, Smetoun *contra* Dundas, 1 *t. c.* 1025. C. XVI. Of the partie beand ſeik, or of greit age ſummoundit to give his aith.

ITEM, The Judge may not refer ony querrel or pley to the aith of the defendar, gif the perſewar offeris himſelf readie to preive the ſamin be witneſſis: Bot gif ony perſoun complene upon ane uther, and the defendar deny the clame, and the perſewar has na witneſſis, the defendar ſall clenge himſelf be the law of the burgh, *Leg. burg. c.* 41. *in lib. Commiſſ. Item*, Gif the perſewar, havand na pruif, referris the libel or clame to the defendar's aith, he, beand decernit to give his aith thairupon, aucht and ſould preſentlie ſweir, or than deſyre ane delay to be avyſit thairwith, and give his aith thairupon. *Mod. ten. cur. c.* 5. *unde hoc poteſt recte colligi. De except. c.* 16. C. XVII. Probatioun be witneſſis, ſtoppis probatioun be aith.

C. XVIII. Anent the aith of ane minor.

ANE actioun and cauſe perſewit at the inſtance of ane minor, without conſent of his tutoris or curatouris, in the quhilk the aith of the ſaid minor ſould be gevin, gif he be of ſic age as he may not gudelie ſweir, or zit be abſent and furth of the realme, his tutor or curatour may ſweir for him, *et in animam ipſius.* 16 *April.* 1554, Johne Borthwik *contra* James Clepone, 1 *t. c.* 731.

C. XIX. Ane exceptioun may be provin be the partie's aith.

ANE exceptioun may be referrit to the aith of the perſewar, be the defendar, and provin thairby; becauſe ane exceptioun may be als weill provin *per juramentum deciſorium litis*, as be writ or witneſſis, 22 *Mart.* 1554, James Aikman *contra* Elizabeth Cant. Gif ony exceptioun be proponit be the defendar, and ane part thairof referrit be the perſewar to his aith, he aucht not be compellit to give his aith thairupon, except the perſewar refer the haill exceptioun to his aith. 27 *Novemb.* 1554, James Douglas *contra* Robert Ormeſtoun, 1 *t. c.* 1180.

C. XX. Aſſedatioun of liferent.

ASSEDATIOUN of liferent may be provin be the aith of the maker thairof, the ſamin beand referrit to his aith be him to quhom it was maid. 7 *Maij*, 1534, 1 *t. c.* 968.

C. XXI. The avail of ſtolin geir may be provin be the partie's aith.

GIF ane intromettis with, and takis ane uther man's purſe, and the away-taking, or intromiſſioun thairwith, be provin, or confeſſit in judgment, the avail, quantitie and nombre of the money beand thairin, aucht and ſould be referrit to the aith of the awner thairof. 14 *Decemb.* 1554, 1 *t. c.* 1182.

C. XXII. Of the partie failzieand to compeir to give his aith.

ITEM, Gif ony clame, libel, defence or exceptioun, is admittit to the perſewar's or defendar's aith, nather of thame ſall be heard to mak thair purgatioun and acquittance, be giving of thair aith, gif he was ſummoundit of befoir to ane certane day to that effect, and failzeit to compeir to give his aith. *De except. c.* 16.

C. XXIII. In quhat cauſis the partie ſould not be heard to give his aith.

ITEM, He ſall not be heard to give his aith, gif he compeir efter the pley is endit, be geving of ſentence or decrete thairintill; or gif he ſtandis in the court, and being requirit to give his aith, will ſpeik nathing thairanent; or gif he ſtandis in court, and makis grudging to ſweir; or gif he ſweiris the greit aith, and will not ſweir on ſaul and conſcience; or gif he turnis his bak to the Judge or court, to ſpeik with ony perſoun outwith the court befoir he give his aith. *De except. c.* 16.

C. XXIV. Anent paſſing fra probatioun.

GIF ony man referris his clame, libel, exceptioun, or alledgeance, to his partie adverſar's aith, he may not thairefter repent him thairof, nor turn to ony uther kind of probatioun, albeit his partie has not as zit ſworn nor deponit. 5 *Feb.* 1540, 2 *t. c.* 20.

C. XXV. Efter the witneſſis ar ſworn, the clame or alledgeance may be referrit to the partie's aith.

EFTER the reſſaving, admitting, and geving of the aith of witneſſis, for preiving of ony libel, clame, or exceptioun, he quha producit thame may paſs fra thame, albeit thay be readie to depone, and may refer the ſamin clame, exceptioun or alledgeance to the aith of the partie, aganis quhom the ſaid witneſſis wer producit. 8 *Feb.* 1559, Joachim Holipage *Dutchman*, *contra* Robert Fleming's *wife*, 1 *t. c.* 1334.

AL-

ALBEIT the perſewar offer the ſummoundis, or ony part thairof, to the defendar's aith, and the defendar compeiris at the day aſſignit to give his aith thairupon, the perſewar may refuſe to reſſave his aith, and may offer him to preive his ſummoundis according as law will. 20 *Jan.* 1533, 1 *t. c.* 953. C. XXVI. It is leaſum to the partie to paſs fra that kind of probatioun quhilk he has alreadie tane him to.

IN ony mater or cauſe, conſiſtand in ane uther man's deid, and unknawin to the perſewar, and alſo in all uther cauſis, quhairof the veritie and treuth is not knawin to the perſewar, nathing ſould be referrit to the perſewar's aith, albeit the mater and cauſe be ſic quhilk of the law aucht and ſould be referrit to his aith. 9 *Maij*, 1542, Patrick Kirkcaldie *contra M.* David Pitcairne, 2 *t. c.* 111. C. XXVII. Sumtimes nathing ſould be admittit to the perſewar's aith.

GIF the defendar be chargit be the Judge to give *juramentum calumniæ*, gif he believis that he has juſt cauſe to deny the ſummoundis of ſpuilzie, as the ſamin is libellit and perſewit aganis him, and he refuſis to give his aith thairanent, the avail and quantitie of the gudis ſpuilzeit ſould be referrit to the perſewar's aith. 7 *Decemb.* 1552, 1 *t. c.* 1147. C. XXVIII. Of the defendar in actioun of ſpuilzie refuſand to give his aith.

Anent probatioun be writ.

CLAME or contraverſie of debt may be provin be witneſſis, or be writ. Debt may be provin be writ, as quhen ane partie ſchawis and producis in judgment his partie adverſar's or his predeceſſour's hand-writ tuiching the debt acclamit; the quhilk writ, gif his partie adverſar dois grant and recognoſce, he is haldin to warrand, obey and fulfill the ſamin, without ony contradictioun: Bot gif he denyis baith the writ and the ſeill thairof, alledgeand the ſamin to be falſe and feinzeit, he may impreive the ſamin be witneſſis inſert thairintill, or be collatioun or compariſoun of divers uther ſeillis with the ſeill thairof, or of uther writtis or evidentis ſeillit with the ſamin ſeill: And gif he lauchfullie impreivis the ſamin, his partie adverſar ſall tyne his cauſe, and be in the King's mercie. *De jud. c.* 14. *Iter. Camer. c.* 27. C. I. Quhat thingis ſould be provin be writ; and firſt, of debt.

ANE term beand aſſignit be ony Judge to ony certane perſoun, to preive him to have bene, or to be, in heritabill ſtate and fie of ony landis, he aucht and ſould preive the ſamin be writ, and not be witneſſis; becauſe nathing concerning fie and heritage may be provin be witneſſis. 10 *Mart.* 1488, James Gibſone *contra* James Monypenie, 1 *t. c.* 59. C. II. Of heritage.

CONTRAVERSIE or debait beand betwix twa parties anent the richt meithis and marchis of landis, the ſamin may not be provin be witneſſis; becauſe the meithis and marchis of landis concernis the propertie thairof, and thairfoir cannot be provin ſufficientlie bot be ane perambulatioun, and boundand chartour, or uther ſufficient document in writ. 7 *Julij*, 1536, 1 *t. c.* 1028. C. III. Of meithis and marchis of landis.

ALL ſaſines, and uther materis of heritage, may not be provin be C. IV. Of ſaſines.

be witneſſis, bot be autentique writ: And zit nevertheleſs, gif ony perſoun producis in judgment the copie of ane inſtrument of ſaſine, and alledgis that the principal is tint, his partie adverſare may preive be witneſſis that he has abſtractit the original in his defraud, and that the ſamin was ane autentique and publict inſtrument; *quia, ubi de jure quæritur, ſcriptura eſt neceſſaria; ſed ſi illa interierit, aut deperdita ſit, vel per adverſarium abſtracta, ad hoc probandum poteſt quis admitti per teſtes*; witneſſis may in this cais be uſit. 8 *Feb.* 1541, *Laird of* Craigiehall *contra Laird of* Glenbervie, 2 *t. c.* 63.

C. V. Reſignatioun of landis.

RESIGNATIOUN of landis maid in the ſuperiour's handis, ſould be provin ſufficientlie be writ, and the affirmatioun and alledgeance of the ſuperiour, contenit in the inſtrument of ſaſine, beirand the ſamin landis to have bene reſignit in his handis, makis na ſufficient faith nor probatioun of the ſaid reſignatioun, in prejudice of ony perſoun that clamis the ſaidis landis to pertene to him be decreis of the man quha is alledgit to have maid the ſamin reſignatioun, albeit the ſamin confeſſioun makis ſufficient faith aganis the ſaid ſuperiour and his ſucceſſouris. 3 *Maij*, 1542. 20 *Maij*, 1541, Thomas Dodingſtoun *contra N.* Dodingſtoun, 2 *t. c.* 89, & 220.

C. VI. Of ane chartour and infeftment.

ANE chartour, albeit na ſaſine be ſchawin thairupon, gevin be the King, or ony uther ſuperiour, makis ſufficient faith aganis the King, or ſuperiour, that the landis contenit thairin pertenis heritabilly to him to quhom the chartour is maid; and thairfoir the landis may not be decernit in non-entres bot ſen the dait of the chartour, notwithſtanding that the King, or uther ſuperiour, clamis non-entres be divers and ſindrie zeiris befoir the ſaid chartour. 2 *April.* 1542, *The King's Advocate* contra *the Laird of* Lundie, 2 *t. c.* 220.

C. VII. Of heritabill paſturage.

GIF ony man alledgis him to have ane heritabill paſturage of gudis or cattel, on ane uther man's ground, he may not preive the ſamin be witneſſis, bot be writ, and ſpeciallie be infeftment. 27 *Feb.* 1567, James Bannatyne *contra Vicar of* Neutyle, 2 *t. c.* 331.

C. VIII. Renunciatioun of conjunct-fie.

GIF ony perſoun wald preive that ane woman, or Lady, conjunct-fear, has renuncit and gevin over hir conjunct-fie, he aucht and ſould on na wayis be admittit to preive the ſamin be witneſis, bot be writ; becauſe conjunct-fie is gevin be writ, and thairfoir diſcharge thairof ſould be provin be writ. 12 *Julij*, 1518, Margaret Forſtar *contra* Jonet Kennedie, 1 *t. c.* 389.

C. IX. Excambion.

EXCAMBION and interchanging of landis beand betwix twa perſounis, the ſamin efterwart cumand in queſtioun or doubt, ſould on na wayis be provin be witneſſis, bot be writ. 2 *Decemb.* 1518, 1 *t. c.* 391.

C. X. Aſſedatioun of liferent.

TAK and aſſedatioun of ony landis, or uther poſſeſſioun, for all the dayis of ony perſoun's lifetime, may not be provin be witneſſis, bot be writ. 20 *Jan.* 1532, *Dame* Chriſtian Preſtoun *contra* Alexander Zoung, 1 *t. c.* 415.

C. XI. Diſcharge of aſſedatioun.

ANE diſcharge or renunciatioun of ane tak and aſſedatioun, maid in

in writ for the ſpace of ninetene zeiris, ſould not be provin be witneſſis, bot be writ. 9 *Decemb.* 1532, Hew Ferme *contra Schiref of* Fife, 1 *t. c.* 440.

C. XII. Privie conſtitutiounis of ane abbay.

PRIVIE conſtitutiounis, ſtylis, ſtatutis, and ordinances of ony Abbay, tuiching takkis and aſſedatiounis ſet to the tenentis of the ſaid abbacie, may not be provin be witneſſis, nor be na teſtimonial gevin be ony man makand mentioun of the ſamin, bot be the principal or autentique extract of the ſaid ſtatutis and ordinances. 6 *Julij*, 1549, 1 *t. c.* 1109.

C. XIII. Tranſactioun in cauſe of ſpuilzie.

GIF ony perſoun beand callit for ſpuilzie of teindis, or ony uther gudis and geir, alledgis that ony man, in his name, tranſactit with the perſewar, that he ſould intromet with the ſamin teindis or geir; this ſamin alledgeance is ſufficient, and ſaifis him fra ſpuilzie, bot he aucht and ſould preive the ſamin be writ, and not be witneſſis. 11 *Feb.* 1533. 6 *Mart.* 1533, Jaſper Cranſtoun *of* Corsbie *contra* George Home, 1 *t. c.* 451.

C. XIV. Payment and diſcharge of ane obligatioun.

ANE man beand perſewit for ony debt or ſowme of money, conform to his obligatioun maid in writ thairupon, gif he alledgis that he, or utheris in his name, has maid ſufficient payment thairof, he aucht and ſould preive the ſamin be writ, and not be witneſſis. 6 *Feb.* 1537, Duncane Ferguſoun *contra* James Campbell, 1 *t. c.* 494.

C. XV. Payment and diſcharge of ane decreit.

PAYMENT or diſcharge of ony ſowme of money, contenit in ane decreit of ony Judge, may not be provin be witneſſis, bot be writ, except the ſamin be maid in ſic a province and part of the countrey, in the quhilk ſic payment and diſcharge uſis not commounlie to be maid be writ, bot be word and faith of bodie; in the quhilk cais the ſamin may be provin be witneſſis; *modò ſint, ad minus, numero quinque, et omni exceptione majores, et concorditer probantes.* *Ult. Feb.* 1546, *Mr.* Andro Home *contra* Thomas Ker, 2 *t. c.* 178.

C. XVI. Of licence and tolerance.

GIF ony man alledgis that ane uther grantit to him *precario*, and be tolerance and licence, to paſture his cattel, or caſt faill and dovet upon his ground, the ſamin ſould be provin be writ. *Ult. Julij*, 1550, 1 *t. c.* 1126.

C. XVII. Of tranſactioun and compoſitioun.

TRANSACTIOUN and compoſitioun may not be provin be witneſſis, bot be writ. 21 *Jan.* 1540, *Lord* Somervell *contra N.* 2 *t. c.* 13.

C. XVIII. Of halding of landis.

THE halding of landis may not be provin be ane inſtrument of ſaſine gevin be vertue of the ſuperiour's precept inſert thairin, bot the ſamin ſould be provin be ane chartour and ſaſine, or ellis be ane retour. 17 *Martij*, 1541, 2 *t. c.* 80.

C. XIX. Of ane liferent promiſe.

IN actiounis of removing, ane promiſe maid be ane man to ane uther, that he ſall not be removit fra the landis induring his lifetime to quhom the ſamin is maid, or of his quha maid the ſamin,

ſould not be provin be witneſſis, bot be writ, or be aith of the partie. 11 *Julij*, 1565, 1 *t. c.* 1331.

C. XX. Of a conſuetude in bruiking of landis.

IN actioun of removing, gif ony temporal man's tenent alledge he ſould not be removit, becauſe it is the conſuetude within the landis and baronie quhair he dwellis, that, the takiſman beand deceiſt, his bairnis ſould not be removit, thay payand to the Lord of the ground ilk five zeiris thair greſſum, the ſamin conſuetude, and all uther conſuetudis of the tenentis richt in bruiking and joiſing of landis, may not be provin be witneſſis, bot be writ in temporal men's cauſis; bot in kirk landis, and ſpiritual men's actiounis, ony ſic conſuetude may be provin be witneſſis. 9 *Julij*, 1542, Johne Finlaſon *contra the Laird of* Keir, 2 *t. c.* 103.

C. XXI. Of proving of ane to be air.

ANE man cannot be provin air to his predeceſſour, bot be writ, 29 *Julij*, 1552, 1 *t. c.* 1141. *Item*, Ane perſoun may be provin to be air to his predeceſſour be ane decrete of ane ordinar Judge, gevin at his inſtance, as air, or aganis him, as air to him, without ſchawing of ony retour or ſaſine to that effect. 13 *Decemb.* 1552. 17 *Mart.* 1561, Iſobel Balfour *contra Lord* Lindſay, 2 *t. c.* 246.

C. XXII. Diſcharge of ane obligatioun.

QUHAIREVER ane obligatioun or contract is maid in writ, the tranſactioun thairupon, exoneratioun or diſcharge thairof, ſould be provin be writ, and not be witneſſis inſert in the ſaid contract or obligatioun, nor be nane utheris, 17 *Feb.* 1549, *Laird of* Kerſe *contra* George Panter. 14 *Feb.* 1549, *The Mr. of* Hailis *contra Abbot of* Neubottill, 2 *t. c.* 197. *Item*, The renunciatioun and diſcharge of all pactiounis, contractis, alienatiounis, and uther diſpoſitiounis quhatſumever, maid in writ, aucht and ſould be provin be writ, as ane renunciatioun of ane tak and aſſedatioun of landis, and uther poſſeſſiounis, ſould be provin be writ, and not be witneſſis. 9 *Decemb.* 1533, 1 *t. c.* 950.

C. XXIII. Of poinding and compryſing.

POINDING and compryſing of ony gudis and geir may not be provin be witneſſis, bot be writ. 26 *Mart.* 1542, *M.* Andro Blakſtok *contra N.* Wilſone, 2 *t. c.* 88.

C. XXIV. Of judicial actis.

GIF ony perſoun alledge him to have bene wrangouſlie accuſit be ane uther in judgment, of thift, or ony uther crime, and to be quyte and clengit thairof, the ſamin may not be provin be the Judge, Clerk, memberis of court, perſounis of inqueiſt, or uther famous witneſſis; becauſe judicial actiounis and actis may not be provin be witneſſis, bot be writ. 9 *Decemb.* 1542, *The puire wife of* Brouchtoun *contra* Johne M'Cale, 2 *t. c.* 129.

C. XXV. Of ſaſine.

ANE inſtrument of ſaſine grantit to ony man, conform to ane chartour of conjunct-fie maid to him and his wife, is not ſufficient probatioun that his wife was ſaiſit in the ſamin landis, gif in the ſaid inſtrument na ſpecial mentioun was maid of ſaiſine gevin to the wife. 6 *Julij*, 1543, *N.* Meldrum *contra the Laird of* Pitſligo, 2 *t. c.* 148.

C. XXVI. Of the profitis of non-entres.

THE avail and profitis of landis decernit in non-entres, may not be

be provin be witneſſis, bot be writ, *viz.* be the retour thairof, or be ane extract out of the buke of *reſponde*, drawin autenticlie out of the chekkar rollis, beirand that the Schiref has maid his compt of the maillis, conform to the retour gevin in the chancellarie, and has tane allowance thairof *per ſaſinam datam*; the quhilk extract is als ſufficient as the principal retour in this cais. 14 *Mart.* 1566, Peter Oliphant *contra Lord* Oliphant, 2 *t. c.* 326.

ANENT probatioun of exceptiounis be writ. *Mar. R.* 2 *fol. poſt* 168. 2 *Decemb.* 1557. C. XXVII.

GIF ony partie proponis ane exceptioun or alledgeance, quhilk aucht and ſould be provin be writ, and the proponar thairof alledge that the writ, or evident, quhairwith he ſould preive the ſamin is in ane place far diſtant, and offeris him to mak faith thairupon, and thairfoir deſiris ane competent day and term for productioun of the ſamin; gif the Judge admit the ſaid alledgeance to probatioun, and nevertheles aſſignis for productioun thairof over ſchort ane day, at the quhilk it is impoſſible to produce the ſamin writ, and thairfoir the ſaid partie proteſtis for nullitie of proces, and remeid of law; the proces and ſentence, with all that followis thairupon, led, gevin and deducit aganis the ſaid partie, for not preiving of his ſaid alledgeance, is of nane avail, and aucht and ſould be reducit. 3 *Junij*, 1549, *Laird of* Blairquhan *contra* Duncan Craufurd, 1 *t. c.* 689. C. XXVIII. Anent the term of productioun of writtis.

GIF the clame, libel, exceptioun, or ony uther alledgeance, be admittit to probatioun, the quhilk ſould be provin be writ, and the partie alledgeand that the inſtrument, neceſſar for preiving of his intent, was takin in the handis of ane Notar, and as zit not extractit nor deliverit be the ſaid Notar, he aucht and ſould have letteris be deliverance of the Lordis, charging the Notar to deliver the ſaid inſtrument: And gif the Notar denyis him to have bene Notar thairto, it may be provin be ſufficient witneſſis that the ſamin was takin in his handis: And gif it happinis in the time of the ſamin proces of probatioun dependand aganis him, to cum to the partie's knawledge, that ane uther man was Notar in the ſaid matter, and that inſtrument was takin in his handis thairupon, the partie makand faith that the ſamin of new is cum to his knawledge, aucht and ſould have the like diligence as is befoir expremit aganis the ſecund Notar beand on life; utherwayis, gif he be deid, the partie may call and perſew for tranſuming of the prothocal. 5 *Decemb.* 1566, Jonet Striviling *contra* William Menteith, 1 *t. c.* 1343. C. XXIX. Anent ane inſtrument takin in a Notar's hand, and not deliverit be him to the partie.

ANE term beand aſſignit to the partie for preiving of his ſummoundis, or alledgeance, the quhilk neceſſarlie mon be provin be writ, quhilk writ is in the hand and poſſeſſioun of ane uther perſoun, he may rais letteris compulſatour aganis him for productioun and delivering of the ſaid writ; the quhilk letteris ſould be raiſit in due time, befoir the ſaid term; utherwayis gif thay be raiſit thairefter, the ſamin is not ſufficient, and the term of probatioun may be circumducit aganis him. 25 *Mart.* 1568, *Abbot of* Balmerinoch *contra Laird of* Kinneir. C. XXX. Anent writis beand in ane uther man's poſſeſſioun.

ANE

C. XXXI. Ane chartour of confirmatioun.

ANE evident, or chartour of confirmatioun, maid and gevin be ane havand powar to mak and give the ſamin, and contenand in it all and haill the chartour and evident quhilk is confirmit, as the commoun uſe and conſuetude is in ſic caiſis, is autentique, and makis als greit faith in preiving of ony thing contenit in the evident quhilk is confirmit, as the ſamin itſelf may do in ony wayis, 18 *Decemb.* 1564, James Brown *contra* Elizabeth Williamſone, 1 *t.* *c.* 830.

C. XXXII. Of ane inſtrument under the note and ſubſcriptioun of ane Notar-publict.

ANE inſtrument under the note and ſubſcriptioun of ane Notar-publict, beirand ony gudis or geir alledgit ſpuilzeit to have bene lauchfullie reſtorit, als gude as thay wer the time of the away taking thairof fra him, preivis not the avail of the ſaidis gudis, nor zit that thay wer als gude the time of the reſtitutioun as thay wer the time of the away taking; *quia Notarius non poteſt teſtificari, niſi de his, quæ percipit ſenſu corporeo; et valor rei percipitur judicio intellectûs.* 24 *Martij*, 1541, Miller *contra the Laird of* Cullernie, 2 *t.* *c.* 87.

C. XXXIII. Ane rolment of court.

ANE rolment of court, gevin be ane inferiour Judge, or ane decrete of the Lordis, beirand and contenand the ſubſtancial punctis of ane infeftment, chartour, ſaſine, or ony uther evident, is als autentique, and has als greit faith, as the principal ſaſine, chartour, or evident. 10 *Martij*, 1547. 20 *Decemb.* 1550, 2 *t.* *c.* 131.

C. XXXIV. Of ane extract of the chekkar rollis.

The extract or out-draucht of the chekkar rollis of ane Schiref's compt, maid in the chekkar, under the ſubſcriptioun of the Clerk of regiſter, beirand ſaſine to be gevin of ony landis to ony perſoun, makis ſufficient faith: And gif he be deceiſt, the ſamin is als ſufficient in the ſervice of brevis, and in all uther cauſis, as the principal ſaſine, gif the ſamin wer extant. 1 *April.* 1530, 1 *t.* *c.* 301.

C. XXXIV. Of ane inſtrument relative to ane uther.

ANE inſtrument beand relative to ane uther inſtrument, writ or evident, makis not ſufficient probatioun of ſic thingis as ar contenit in the uther inſtrument, except the ſamin be likewayis producit. 18 *Junij*, 1566, Donald Campbell *contra* Johne Grahme, 1 *t.* *c.* 1335.

C. XXXVI. Exceptioun aganis inſtrumentis and evidentis producit for probatioun.

INSTRUMENTIS, evidentis, or writ, producit for probatioun of ony actioun or defence, makis na faith, nather ſould be reſſavit, gif thair be ane raſure, or diverſitie of hand-writtis, or alteratioun of the writ, ſpeciallie in ane ſubſtancial place; or gif the ſamin has not ane ſufficient and autentique ſeill and ſubſcriptioun; or gif thair be not twa witneſſis at the leiſt contenit thairintil, with the Notar; or gif the ſamin is ſubſcrivit with ane as Notar, quha is ane ſuſpect perſoun; or gif the ſamin be ane obligatioun of debt, and contenis na lauchful cauſe quhairfoir the ſamin is auchtand; or gif the ſamin contenis na dait, nor mentioun of day and place; for like as witneſſis ſould depone tuiching the place, even ſa the inſtrument ſould contene the place quhairin the obligatioun or contract was maid; or gif the paper or parchment is auld, and the writing be recent and new; or gif the ſamin be ſubſcrivit be ane Notar, quha is not Notar-publict, bot haldin and repute ane privie perſoun; or gif the ſamin be cancellit or rivin, or interlynit betwix the lynis, or in

in the margin; or gif the ſamin contenis twa or ma thingis repugnant and contrarious ane to ane uther; or gif the ſamin is not the principal or autentique, bot allanerlie ane exemple thairof. *De except. c.* 11, 12. *Ex lib. Scon.*

C. XXXVII. The defendar may ſumtime be compellit to produce his evidentis for preiving of the perſewar's clame.

GIF the ſuperiour callis and perſewis ony man as his tenent and vaſſal, for his ward, mariage or releif, and his clame, or ony alledgeance, be admittit to his probatioun; for preiving quhairof it is neceſſar to him to have the ſaid tenant, or ony uther man's chartour and evident; the ſaid tenent, or uther perſoun, may be compellit to produce and exhibit the ſamin befoir the Judge, for preiving of the ſaid clame or alledgeance. 27 *Jan.* 1533, 1 *t. c.* 955.

C. XXXVIII. Probatioun of ane exceptioun of propertie, contrare the libel.

GIF ony perſoun callis and perſewis ane uther for troubling and moleſting of him within certane meithis and marchis of his landis, not qualifying, in his libel or clame, ane cauſe quhairby the landis contenit in his alledgit boundis may pertene to him in propertie, bot onlie alledging him to be in poſſeſſioun thairof, within the boundis libellit; and the defendar alledge that he did na wrang, becauſe the ſaidis landis, contenit in the ſaid libel, ar contenit within his boundand chartour, and evidentis of the landis pertening to him in heritage, and he, be virtue thairof, in peciabill poſſeſſioun; gif the perſewar nather alledgis him to have ony boundand chartour of the ſaidis landis contenit in his libel, nor zit can verifie and preive the ſamin be ony uther writ, the ſaid alledgeance proponit be the defendar, albeit it appeir to be contrare to the libel, aucht and ſould be admittit to his probatioun, be reſſoun that he offeris him to preive the boundis contenit in his exceptioun, be ane boundit evident, or uther writ; becauſe ane exceptioun of propertie, foundit upon ane boundit evident, and upon poſſeſſioun, evacuatis ane clame or libel foundit upon poſſeſſioun allanerlie; be reſſoun that ane alledgit poſſeſſioun, or *jus poſſeſſorium*, is tahin away, ather be ane decrete of perambulatioun, or be ane boundand evident: And the defence maid of the propertie is not contrare to the poſſeſſioun, quhair ather ane decrete of perambulatioun, or boundand evident, is alledgit aganis the poſſeſſioun, albeit utherwayis thay micht appeir contrare; for ane decrete of perambulatioun, or boundand evident, wer of na force nor effect, nor could do ony ſteid nor ſervice, gif ather of thame micht not moit nor tak away a ſimpill poſſeſſioun. 17 *Decemb.* 1564, *Laird of* Fedderat *contra Laird of* Pitſligo, 1 *t. c.* 892.

Of Notaris.

C. I.

NOTARIS and Tabelliounis ſould be maid be the King, and not be the Emperour. *Ja.* III. *fol.* 52. *c.* 38. 20 *Nov.* 1469.

C. II.

ELECTIOUN and examinatioun of Notaris. *Ja.* V. *fol.* 128. *c.* 46. 3 *Decemb.* 1540. *Mar. R. fol.* 156. *act.* 28. 1 *Feb.* 1551.

C. III.

NOTARIS ſould be examinat be the Lordis of counſal, and thair

thair protocollis markit. *Mar. R. fol.* 163. *act.* 18. 20 *Junij*, 1555.

C. IV. THAY ſould be preſentit be the King, and admittit be the Lordis of ſeſſioun. *Mar. R. fol.* 176. *act.* 15. 4 *Julij*, 1563.

C. V. THAY ſould be examinat, and, being fund culpabill, puniſt. *Ja.* IV. *fol.* 103. *act.* 98. 11 *Martij*, 1503.

C. VI. NOTARIS, or court Clerkis to Schireffis, Stewartis, Baillies and utheris, baith to burgh and land, ſould be ſworn, examinat, and admittit be the Lordis of ſeſſioun. *Ja.* V. *fol.* 129. *c.* 48. 3 *Decemb.* 1540.

C. VII. THAIR admiſſioun, maneris, qualificatioun, cautioun, and thair protocollis, to be producit befoir the Lordis of ſeſſioun. *Ja.* VI. *fol.* 11. *c.* 45. 29 *Julij*, 1587. *Mar. R. fol.* 177. *c.* 15. 4 *Junij*, 1563, *& fol.* 163. *c.* 18. 20 *Junij*, 1555.

C. VIII. MINISTERIS may not be Notaris, except in teſtamentis. *Ja.* VI. *fol.* 4. *c.* 6. 22 *Maij*, 1584.

C. IX. NANE may be Notaris quha profeſſis not the religioun. *Ja.* VI. *fol.* 12. *c.* 9. 15 *Decemb.* 1567.

Anent inſtrumentis.

C. I. Of ane inſtrument diſcrepant from the protocol.

ANE inſtrument beand diſcrepant in divers ſubſtancial punctis fra the Notar's protocol-buke, makis na faith, *quia magis creditur protocollo, quam inſtrumento.* 11 *Julij*, 1556, Marion Craig *contra* James Mowat *of* Busbie, 1 *t. c.* 1204.

C. II. The protocol of ane inſtrument makis na faith, except it be autenticklie tranſumit.

ANE Notar beand deceiſt, in quhais handis ane inſtrument was tane, the extract of the protocol, or the protocol of the ſamin inſtrument, is not ſufficient and autentique, except it be firſt tranſumit in preſence of ane Judge ordinar, and the extract or tranſumpt, drawin furth and ſubſcrivit be the Clerk of the court, 3 *Junij*, 1564, *Countes of* Caſſilis *contra Erle of* Caſſilis, 1 *t. c.* 1311.

Item, Ane protocol of ane inſtrument makis na faith in judgment, nor outwith judgment, until it be put *in mundo* be the Notar, or, gif he be deceiſt, autenticklie tranſumit, and the parties lauchfullie warnit thairto; ſpeciallie gif it be objectit that the ſamin ſould mak na faith, nor have na ſtrenth. 29 *Octob.* 1487, Jonet Monypennie *contra* Margaret Weymis, 1 *t. c.* 38.

C. III. A tranſumpt makis als greit faith as the principal.

EVIDENTIS, or ony uther writs, beand tranſumit ordourlie befoir ane Judge, the tranſumpt thairof has als greit faith, ſtrenth and effect in judgment, and outwith the ſamin, as the principal can or may have in ony maner of way. *Pen. Jan.* 1532. 27 *Mart.* 1533. *Ult. Julij*, 1564, Aiſon *contra* Robert Aiſon, 1 *t. c.* 428.

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C. IV. The form of tranſuming.

ANE inſtrument or evident, tranſumit be ane Notar or ony uther perſoun privatlie, makis na faith; becauſe the ſamin ſould be tranſumit be the authoritie of ane Judge, and be ane publict edict, charge-and and warnand all perſounis havand or pretendand to have interes thairto, to compeir at ane certane day, to heir and ſé the ſamin autenticklie tranſumit, 7 *Julij*, 1543. And gif all perſounis that has ſpecial interes, and that ar knawin to have ſpecial interes, be not ſpeciallie callit to heir and ſé the inſtrument tranſumit, the tranſumpt makis na faith, 20 *Mart.* 1557. 3 *Junij*, 1564, *Countes of* Caſſilis *contra Erle of* Caſſilis, 1 *t. c.* 1081. In tranſuming of ane Notar's protocol, it aucht and ſould be ſufficientlie provin and verifyit in preſence of the Jugeis, that the ſamin protocol was the handwrit of the umquhile Notar, and that he was famous and legal, and that recourſe was had to him in the countrey, as to ane publict and famous Notar, for taking of inſtrumentis in his handis. 3 *Junij*, 1564, *Countes of* Caſſilis *contra Erle of* Caſſilis. 1 *t. c.* 1312.

C. V. Of the tranſuming of ony evident havand the ſeill craſit and ſpilt.

GIF the ſeill of ony evident be craſit, ſpilt or brokin, in ſic ſort, that the awner thairof feiris that ſchortlie it periſh allutterlie, the Lordis, or ony uther Jugeis ordinar, at his deſire, may tak the depoſitioun of divers and ſindrie famous witneſſis, quha knew the man quhom to the ſeill pertenit, and recognoſce the ſamin, and thairefter tranſume it, and ordain that the tranſumpt thairof ſall have als greit faith in judgment, and outwith the ſamin, in all time cuming, as the principal itſelf; providing that all parties havand interes in the ſaid matter, gif ony be notourlie knawin, be lauchfullie ſummoundit and warnit heirto. 21 *Jan.* 1502, *M.* Andro Cadrow, 1 *t. c.* 133.

C. VI. It is not neidful that the precept of ſaſine be inſert in the inſtrument.

ANE inſtrument of ſaſine is ſufficient and autentique, albeit the precept of ſaſine be not inſert in the ſamin. 14 *Decemb.* 1528, 1 *t. c.* 347.

C. VII. The place ſould be ſpecifyit.

ANE publict inſtrument makis na faith, gif it contenis not expreſſlie ane ſpecial place, quhairin the ſamin was takin in the Notar's hand; and the ſamin is not autentique, gif it contenis the name of ony houſe or place, and zit ſchawis not nor declaris quhair the ſaid houſe or place is or lyis. 24 *Julij*, 1542, Edward Stewart *contra* John Merſchel, 2 *t. c.* 126.

C. VIII. Ane inſtrument raſit in a ſubſtancial punct, makis na faith.

ANE inſtrument, chartour, contract, obligatioun, or uther writing, beand raſit in ony ſubſtancial part, as in name and ſirname, ſubſcriptioun of the Notar or partie, is not autentique, nather ſould mak ony faith, albeit the partie offer him to preive be the witneſſis inſtrumentar, or *per comparationem literarum et inſtrumentorum ejusdem notarij*, the ſaid raſure to be reſtorit, and the ſaid placis to be fillit be the Notar himſelf. *Ult. Feb.* 1549, *Laird of* Dunnone *contra M.* Henrie Lauder, 2 *t. c.* 201. 12 *Aug.* 1511, *The King contra* John Boyd, 1 *t. c.* 170.

C. IX. Of evidentis interlynit.

CONTRACTIS, obligatiounis, or evidentis, beand interlynit in ony part quhilk is not ane ſubſtancial point, nor zit alteris the ſentence thairof, ar ſufficient and autentique in the ſelf, notwithſtanding

ing the ſaid interlineatioun; ſpeciallie gif the wordis of the ſaid interlineatioun and the body be all of ane man's hand-writ. 14 *Mart.* 1510, *Laird of* Balvirie *contra* Henrie Ramſay, 1 *t. c.* 164.

C. X. Ane inſtrument gevin furth be ane Notar diſchargit, is of nane avail.

GIF ony man that was ſumtime ane Notar, and thairefter, befoir ane Judge, is removit and diſchargit of his office of notarie, gevis furth ony inſtrument or writ, under his ſigne and ſubſcriptioun, uſit be him the time that he exercit the ſaid office, the ſamin inſtrument, gevin efter his renunciatioun or diſcharge, is be way of exceptioun null, and of nane avail, and makis na faith in judgment, nor outwith the ſamin. 21 *Feb.* 1491, Henrie Kilpatrik *contra* Robert Charterhous, 1 *t. c.* 72.

C. XI. Inſtrument gevin furth be ane Notar convict of falſet.

GIF ony Notar be anis convict of falſet be decrete of ane Judge, and ane inſtrument gevin furth be him improvin befoir ane Judge, as fals and feinzeit, na faith nor credence ſould be gevin to ony inſtrument gevin furth be him efter the day and dait of the ſaid improbation, albeit he be not diſchargit at the geving of the ſaid decrete. 22 *Novemb.* 1540, 1 *t. c.* 1051.

C. XII. Of the geving furth of ane inſtrument be a Notar, quhais protocol is tint.

ANE inſtrument beand takin in ony Notar's hand, of the quhilk he cannot efterwart (his protocol buke beand brint or deſtroyit be chance or force) remember upon the ſpecial day, hour, and witneſſis requirit be him the time of the taking of the ſaid inſtrument, and zit declaris and namis certane perſounis quha wer preſent at the taking thairof, of the quhilk ſum, as he believis, wer requirit to be witneſſis; the Lordis may charge the ſaidis perſounis to compeir befoir thame, and examine thame gif thay heard ſic ane inſtrument takin, and wer witneſſis requirit thairin; and, conform to thair depoſitiounis, the Notar may be chargit to mak, give, and deliver ane autentique inſtrument conform thairto, and the ſamin to be ſufficient, and mak faith; providing alwayis that the geving furth thairof hurt nor prejudge not the firſt inſtrument ellis gevin furth in form, in cais it be fund and recoverit efterwart, bot the ſamin to ſtand in the awin ſtrenth, force and effect. 12 *Mart.* 1560, *Laird of* Ormeſtoun *contra* Lancie Hamiltoun, *and* John Macneil *Notar*, 1 *t. c.* 787.

C. XIII. Of ane evident ſubſcrivit be him quha is commounlie haldin and repute ane Notar.

ANE contract, writ, obligatioun, or uther evident, ſubſcrivit be ony man's hand led at the pen be ony perſoun, as Notar-publict, and thairefter he quha ſubſcrivit the ſamin, as ſaid is, alledge that the ſamin is bot ane privie writing, and ſould mak na faith, becauſe the perſoun quha led his hand at the pen was not ane Notar-publict, bot creatit and maid Notar efter the time of the ſaid ſubſcriptioun, zit nevertheles the ſamin is autentique, and makis ſufficient faith, gif it be ſufficientlie provin that the ſaid Notar, the time of the ſubſcriptioun, was repute and haldin ane honeſt, famous, and commoun Notar, and that the indwellaris of the countrey about had commoun paſſage and acceſs to him in taking of inſtrumentis in his handis, as ane ſufficient Notar. 9 *April.* —— John Turpie *contra* William Turpie, 1 *t. c.* 910.

Anent

Anent probatioun be witneſſis.

EFTER that the partie has choſin ane certane nombre of witneſſis for preiving of his intent, he may not eik, nor deſire ony ma nor thame allanerlie quhom he has choſin, *Quon. attach. c.* 81. *Leg. For. c.* 56. And thairfoir, ſeing that the termis of probatioun ar gevin to the perſewar for preiving of his intent, na ma witneſſis ſould be grantit to him than he warnis and ſummoundis at the firſt, ſecund, or at the leiſt, at the thrid term: And ſiclike, ane term of probatioun is allanerlie grantit to the defendar for preiving of his exceptioun, and na ma witneſſis ſould be gevin to him than he ſummoundit at the ſamin term. C. I. Summounding of witneſſis.

GIF the partie gevis his aith, that the witneſſis that ar neceſſar for preiving of his intent ar abſent and furth of the realme, he aucht and ſould have the ſpace of threſcoir * dayis, to ſummound thame, and the remanent witneſſis that dwellis within the realme ſould be in like wayis ſummoundit to the ſamin day. 7 *Junij*, 1561. Marion Adamſoun *contra the Comptrollar*, 1 *t. c.* 1255. C. II. Summounding of witneſſis beand furth of the realme. * *al.* xl.

IN all actiounis and cauſis, he quha producis ony witneſſis for preiving of his intent, is not haldin of the law to mak ony aith, bot he quha is producit and reſſavit as witnes ſould ſweir that he ſall not falſe ſay, nor ſuith conceil wittinglie in that cauſe, nather for love of the ane partie, nor for haitret of the uther; and that he has knawledge of his depoſitioun be his awin proper ſicht and heiring, and be reherſing and report of his foirbearis, and be ſic perſounis to quhom he gevis the like credence as to himſelf: And it is to wit, that record and declaratioun of the ane partie's petitioun, and anſwer of the uther, ſould be declarit and ſchawin to the witneſſis, that thay may knaw quhat thay ſall ſweir befoir thay ſweir. *Leg. burg. c.* 32. *De jud. c.* 31. C. III. Aith of witneſſis.

PROBATIOUN allanerlie be ane witneſs, is not ſufficient of the law; *quoniam in ore duorum aut trium ſtat omne verbum.* 6 *Julij*, 1549. 1 *t. c.* 1108. C IV. Twa witneſſis at the leiſt makis lauchful probatioun.

THE libel, exceptioun or alledgeance, beand admittit to probatioun, the partie aganis quhom the ſamin is admittit ſould be warnit to ſé the witneſſis reſſavit, or uther probatioun led and deducit in the cauſe. 1 *Julij*, 1550, 1 *t. c.* 1118. C. V. The partie ſould be warnit to ſé probatioun reſſavit.

GIF witneſſis be reſſavit, ſworn, and admittit in preſence of the partie, or in his abſence, he beand contumax, he ſall not be heard efterwart to propone ony exceptioun or alledgeance aganis thame. 27 *April.* 1540, Fentoun *contra* Lindſay, 2 *t. c.* 2. C. VI. The partie beand contumax, may uſe na exceptioun aganis the witneſſis.

Na witneſſis ſould be reſſavit befoir litiſconteſtatioun is mald lauchfullie in the cauſe, *De except. c.* 10. *ex lib. Scon.* Nevertheles witneſſis dwelland far off, and compeirand, may be reſſavit be C. VII. Sumtimes witneſſis may be reſſavit befoir

litiſconteſtatioun. the Lordis, for reſſonabil cauſis moving thame thairto, and examinat *tanquam teſtes poſtea aſſuturi*, notwithſtanding thair be na litiſconteſtatioun maid, nor nathing admittit to probatioun. 13 *Mart.* 1532, Hector Maclane *contra* John Maclane, 1 *t. c.* 408.

C. VIII. Witneſſis beand ſummoundit may ſumtimes be reſſavit.

WITNÉSSIS not beand ſummoundit, and zit compeirand in ony actioun or cauſe, may be reſſavit be the Lordis of counſal, gif thair be na uther lauchful cauſe to repel thame, albeit the partie object in the contrare. 4 *Julij*, 1543, *Laird of* Glencors *contra the Laird of* Kirkmichael, 2 *t. c.* 150.

C. IX. Of a witneſs denuncit rebel, and thairefter compeirand.

GIF ane man be denuncit rebel, and put to the horn, for noncompeirance, to beir witneſſing in ony actioun or cauſe, and thairefter compeiris and purgis the contumacie, and is content to depone in the ſaid mater, he aucht and ſould be laxt fra the horn, and reſſavit as witneſs, gif thair be na reſſonabill cauſe alledgit in the contrare. 26 *Novemb.* 1552, 1 *t. c.* 1146.

C. X. Witneſſis may be re-examinat.

WITNESSIS beand reſſavit and examinat for probatioun of ony ſummoundis or alledgeance, gif the partie, at quhais inſtance thay wer producit, and thay thairefter alledge, that thay wer not examinat be the Judge upon the punctis of the ſummoundis or alledgeance; or that the Clerk, writer of thair depoſitiouns, writ thame not as thay deponit, thay aucht and ſould be ſummoundit, to be of new examinat, and depone and declare the veritie in the mater. 20 *Junij*, 1532, Gilbert Inglis *contra Mr.* Alane Inglis, 1 *t. c.* 429.

C. XI. Expenſis of witneſſis.

GIF ony Baron, or Gentilman, beand ſummoundit to beir witneſſing in ony actioun or cauſe, compeiris, and is examinat, he aucht and ſould have his reſſonabill expenſis taxt and modifyit be the Judge, for himſelf, his ſervandis, horſis and boyis, effeiring to his eſtait, maid be him in cuming, remaning, and paſſing hame agane. 25 *Junij*, 1524, 1 *t. c.* 993.

C. XII. Exceptiounis aganis witneſſis.

GIF the partie oppone aganis the admiſſioun or depoſitioun of witneſſis, and ane exceptioun thairanent be admittit to his probatioun; the day of probatioun beand bypaſt, and na diligence beand done be him for proving of his ſaid exceptioun, he ſall not be heird efterwart to propone ony uther exceptioun contrare the ſaidis witneſſis. 24 *Novemb.* 1533, 1 *t. c.* 946.

C. XIII. Na exceptioun aganis witneſſis alreadie examinat.

GIF witneſſis be reſſavit and admittit in ony cauſe, and the partie lauchfullie ſummoundit thairto, the partie aganis quhom thay ar admittit ſould not be heard efterwart in that inſtance to object or uſe ony defenſis aganis thame. 13 *Julij*, 1542, 1 *t. c.* 1077.

C. XIV. Of examinatioun of witneſſis, beand ſeik and ageit.

GIF ony man ſummoundit to beir witneſſing in ony actioun or cauſe civil, be waik, impotent, ageit or ſeik, quhairthrow he may not travel without danger of his life, the ſamin beand ſufficientlie provin be ane teſtimonial of his Miniſter, Exhortar and Reidar, and with twa witneſſis, the Judge, upon the expenſis of him quha deſiris, or at quhais inſtance the ſaid witneſs ſould be examinat, ſould paſs to the ſaid witneſs, and examine him in ſic thingis quhairin his teſti-

teſtimonie is requirit, 4 *Octob.* 1533. 11 *Feb.* 1551. And gif the Judge neglect to gang or ſend ony to do the ſamin, the partie ſould not be hurt nor prejudgit thairby; bot the Judge ſould gang, or direct ſum uther in his place of new agane: And ſiclike is to be underſtuid of the Judge quha ſould paſs or ſend to examine or reſſave the aith of ony partie, and delayis or pretermittis to do the ſamin. 12 *Decemb.* 1561, *Erle* Cathnes *contra Lord* Oliphant, 1 *t. c.* 941.

C. XV. Debt may be provin be witneſſis.

IT is leaſum to ony creditor to preive debt auchtand to him be writ, ſic as the debtour's obligatioun, or be confeſſioun of the debtour, grantand and confeſſand the debt, or be lauchful and ſufficient witneſſis, that heard and ſaw the ſamin; for, be the law of this realme, the creditour may preive be twa leill witneſſis ony debt auchtand to him, to the avail of xl. *s.* and ſiclike be divers witneſſis, efter the quantitie of the debt. *Quon. attach. c.* 81. *Leg. Foreſt. c.* 56.

C. XVI. Of thirlit multure.

ONY man alledgeand ane uther man's landis to be thirlit to his miln, and that thay ſould pay thirlit multure thairintil, may preive the ſamin be witneſſis. 20 *Decemb.* 1533, Alexander Innes *contra Lairdis of* Finlater *and* Boyne, 1 *t. c.* 443.

C. XVII. Of ane zeir's tak.

TAK and aſſedatioun may be provin be witneſſis, to be gevin and ſet for ane zeir, 16 *Julij*, 1532, 1 *t. c.* 481. And ſiclike, gif ane man beand warnit to remove fra ony landis, alledgis that he occupyis the ſamin with expreſs conſent, benevolence and gude will of the perſewar, be the ſpace of ane zeir, he may preive the ſamin be witneſſis, and ſould not be compellit nor aſtrictit to the probatioun thairof be writ. 11 *Julij*, 1543, Marion Ogilvie *contra the Schiref of* Forfar *and Lord* Glamis, 1 *t. c.* 610.

C. XVIII. Of charge to enter in ward.

GIF ony man alledge that he was ſoliſtit, preiſſit or chargit be the King to enter in ward, except he maid and gave infeftment of his landis, the ſamin may be provin be diſcreit and famous witneſſis. 14 *April.* 1542, *The Erle of* Mortoun *contra the King*, 1 *t. c.* 582.

C. XIX. Of intromiſſioun with gudis and geir.

IT may be provin be witneſſis, that ony man is intrometter with his predeceſſour's gudis and geir, as ſucceſſour to him. 21 *Mart.* 1547, 1 *t. c.* 665.

C. XX. Of poſſeſſioun of ane paſſage.

GIF ony burgh, alledgeand thame and thair predeceſſouris to have bene, and to be, in peciabill poſſeſſioun paſt memorie of man, of ane commoun gait and paſſage lyand throw ane uther man's landis and heritage, be carying of fewal, merchandice, leiding of corn is be cart, wane or ſled, he may preive the ſamin be witneſſis. 16 *Julij*, 1532, *Burgh of* Hadingtoun *contra Tenentis of* Thurſtoun, 1 *t. c.* 999.

C. XXI. Of tolerance.

TOLERANCE, or licence, grantit be ony man to ane uther to intromet with teindis or uther geir, may be provin be witneſſis. 11 *Maij*, 1556, *Erle* Merſchal *contra* Richard Udnie, 1 *t. c.* 1202.

C. XXII. Of liquidatioun of victuallis.

LIQUIDATIOUN of the prices of victuallis may be provin be witneſſis. 17 *Mart.* 1560, *Laird of* Drylaw *contra Biſchop of* Dunkeld, 1 *t. c.* 1251.

C. XXIII. Of ejectioun and ſpuilzie.

THE ejectioun of ane man furth of his landis or poſſeſſiounis, or the ſpoliatioun of him of his poſſeſſioun, gudis or geir, togidder with the intromiſſioun with the ſamin, may be provin be divers famous witneſſis, 15 *Decemb.* 1551, 1 *t. c.* 1132. *Item*, In actiounis of ſpuilzie, witneſſis preivand that the perſewar was ſpuilzeit ane zeir or twa befoir the time libellit, albeit that thay preive not that he was ſpuilzeit the time libellit, is ſufficient probatioun to induce and infer ſpuilzie of the time libellit aganis the defendar and to condemn him thairintill; *quia ſpolians intelligitur ſemper ſpoliare, donec ſpoliatus ſit ſemel reſtitutas.* 11 *Feb.* 1540, Somerville *contra* Hamiltoun, 2 *t. c.* 55.

C. XXIV. Payment and diſcharge.

PAYMENT, exoneratioun, quit-clame and diſcharge, may be provin be witneſſis. 21 *Jan.* 1540, *Lord* Somerville *contra N.* 2 *t. c.* 14.

C. XXV. Poinding of cattel.

GIF ony man alledgis that he has lauchfullie poindit ane uther man's cattel in his cornis, hay or girſe, he may preive the ſamin be witneſſis. 27 *Feb.* 1541, *N.* Miller *contra Laird of* Cullernie, 2 *t. c.* 64.

C. XXVI. Diminutioun of rental.

IT is leaſum to preive be witneſſis, that landis gevin in few, or ſet in tak and aſſedatioun be the King, ar gevin and ſet in diminution of his rental, 21 *Maij*, 1542, *The King* contra *the Cardinal's ſone*, 2 *t. c.* 94. *Item*, In cauſe of reductioun of a few, perſewit at the King's inſtance be reſſoun of the diminutioun of his Hienes rental, the ſamin diminutioun may be provin be witneſſis. 12 *Feb.* 1546, 2 *t. c.* 179.

C. XXVII. Of brint writtis or evidentis.

GIF ony partie, at the peremptour term aſſignit to him for probatioun of ony exceptioun, or uther alledgeance, to be provin be writ alanerlie, alledgis the ſaid writ to have bene brint, and thairfoir offeris him to preive the birning, together with the tenour and contentis thairof, be famous witneſſis, that read, ſaw, and knew the ſamin, it is grantit to him; bot na uther witneſſis ſould be ſummoundit or reſſavit, bot the ſamin alanerlie quha wer ſummoundit of befoir, to have compeirit at the ſaid peremptour term, for preiving of the ſamin peremptour exceptioun or alledgeance. 14 *Feb.* 1549, *The Maiſter of* Haillis *contra Abbot of* Newbottil, 2 *t. c.* 198.

C. XXVIII. Promiſe of tocher-gude.

PROMISE of tocher-gude may be provin be witneſſis, and it is not neceſſar to preive the ſamin be ane contract of mariage. 15 *Feb.* 1551, Robert Drummond *of* Carnok, *contra* David Biſſet *of* Ardbeg, 2 *t. c.* 241.

C. XXIX. Perjurie of witneſſis.

GIF witneſſis ſweir and depone in judgment aganis ony partie, quha thairefter raiſis ſummoundis aganis thame, to heir thame decernit perjure and menſworn, he may preive the ſamin be witneſſis, and ſall not be compellit to the probatioun thairof be writ, or be ane

ane aſſiſe. 6 *April.* 1565, *The Laird of* Roſſy *contra Lord* Innermeith's *witneſſis*, 2 *t. c.* 302.

C. XXX. The witneſſis at the reſignatioun ſould be alſo witneſſis in the chartour.

IT is ſtatute and ordanit, that gif ony reſignatioun happinis to be maid in the King's handis, of ony landis or tenementis in favouris of the reſignant, or of ony uther perſoun, and chartour and new infeftment be maid and gevin be his Grace to ony perſoun, be virtue of the ſaid reſignatioun, the King's Secretar ſould write, in the precept to be direct it to the chancellarie, the namis of thame quha wer preſent before the King's Grace at the time of the making of the ſaid reſignatioun; and the Chancellar ſall cauſe the ſamin namis be inſert in the chartour, as witneſſis, thairin to remane in all time cuming. *Rob.* III. *c.* 10.

C. XXXI. Bailliarie.

GIF ony man have the office of bailliatie of ony landis, the tenentis and occupyaris thairof may not be witneſſis for him in ony cauſe or actioun. 15 *Mart.* 1540, *Lord* Somervell *contra Tenentis of* Libertoun, 2 *t. c.* 30.

C. XXXII. The maſter may be witneſs for the ſervand.

ALBEIT the ſervand, or ony man, may not be witneſs for his lord or maſter; nevertheles his lord and maſter may be witneſs in ony cauſe for him that is preſentlie, and at the ſamin time, his man or ſervand, 15 *Maij*, 1542, *Laird of* Pitblado *contra M.* Johne Spens, 2 *t. c.* 91.

C. XXXIII. Tenour of ane contract, or uther evident.

NA witneſſis ſould be admittit to preive the contentis and tenour of ony contract, inſtrument or evident, bot thay quha can reid and write. 28 *Novemb.* 1565, Tho. Ker *contra* James Ker, 2 *t. c.* 310.

C. XXXIV. A burges may be witneſs in the commoun cauſe of the burgh.

INDWELLARIS and burgeſſis of ony town or burgh, may be witneſſis in ony actioun or cauſe concerning the commoun weill or profit of the ſaid town or burgh, 11 *Jan.* 1576, *Town of* Leith *contra town of* Kinghorn, 2 *t. c.* 384.

C. XXXIV. Quha may not be witneſſis.

THIR perſounis under-written may be repellit fra paſſing upon ony aſſiſe, and alſwa fra beiring of ony teſtimonie or witneſs. In the firſt, the father of the partie quha ſould produce the witneſſis, his ſone, his couſing, his brother, or ony of his conſanguinitie, affinitie, or allya, within the feird degré *incluſivè*, *Leg. burg. c.* 143. Bot it is to wit, that witneſſis beand ſib or attingent to the perſewar and defendar, in the like degré defendand of conſanguinitie or affinitie, aucht and ſould nevertheles be repellit fra beiring witneſſing; becauſe of the law of this realme, *paritas gradûs, ſeu par affectionis cauſa, non tollit ſuſpicionem*, 16 *Feb.* 1541, Pa. Gibſone *contra S.* Thomas Wauch.

Item, Thir perſounis may be repellit fra paſſing upon aſſiſe, or beiring of witneſs, *viz.* the maſter or lord of the partie quha ſould produce the witneſſis; his Baillie; he that weiris his leviray or robis; he that is of his counſal or retinew; he that is at that time his ſervand, or he that ſall efterwart zeild him ſervice; his tenent that haldis land of him, and payis him ferme, maill and dewtie, *Leg. burg. c.* 143. *De except. c.* 17. And ſiclike, he that is tasker in ony man's barn, reſſaving profit fra him thairfoir, may not be witneſs

in his cauſe: And gif the Judge reſſavis him witneſs, the partie opponand in the contrare, the proces, ſentence, and all that followis thairupon, is of nane avail, and may be reducit. *Ult. Julij*, 1566, *Laird of* Cambuſnethan *contra* Hamiltoun *of* Garren, 1 *t. c.* 1340.

Item, Thir perſounis may be repellit fra paſſing upon aſſiſe, or beiring of witnes, *viz.* he that is partner with the partie that ſould produce the witneſſis; he that is hyrit and conducit throw neid, profit, and winning; he that is the partie's deidlie enemie, and ſo. *Leg. burg. c.* 143. *De except. c.* 17. Becauſe inimitie and feid ſtandand betwix the partie and the perſoun that is callit to be witneſs aganis him, is a ſufficient cauſe to repel him fra beiring of witneſſing. 24 *Novemb.* 1533, 1 *t. c.* 945. Nevertheleſs, gif lawborrowis being found be ony perſoun to ane uther, and it happin him quha fand the ſamin, efter the finding thairof, to be ſummound-it and chargit be ony of our ſoverane Lord's liegis, to beir leill and ſuithfaſt witneſſing in ony actioun or cauſe aganis him to quhom the ſamin was fund, he on na wayis ſould be repellit, bot ſould be admittit as witneſs, notwithſtanding that he is under lawborrowis to him; becauſe the ſamin was fundin befoir that he was ſummondit to beir witneſs in the matter. 20 *Martij*, 1544, Alexander Adamſoun *contra* John Johnſtoun, 1 *t. c.* 595.

Item, He may not paſs upon aſſiſe, or beir witneſs, that is within fourtene zeiris of age; he that is ſcurgit, baniſhit, or dung throw the town for ony crime, *Leg. burg. c.* 143. *De except. c.* 17. *De maritag. c.* 16. He that is curſit and excommunicat may not beir witnes. 23 *Novemb.* 1532, 1 *t. c.* 414.

Item, He may not paſs upon aſſiſe, or beir witneſs, that is haldin in priſoun or bandis, for ſuſpitioun of ony crime; he that is ane out-law, or at the King's horne; he that is out of his wit, as a lunatique or natural fule or idiot; he that is redemit and bocht fra the Juſtice, or ony uther Judge, for ony treſpaſs; he that is forbiddin of the law to perſew in judgment in ony actioun or cauſe; he that is attaintit, convict or accuſit befoir the Juſtice, of ane criminal actioun, quhill he be purgit and clengit of that quhairof he is accuſit. *Leg. burg. c.* 143. *De except. c.* 17. *De maritag. c.* 16.

Item, He that is puir, perjure, manſworne, theif, or adulterar. *Leg. burg. c.* 143. *De judic. c.* 44.

Item, He that is convict of perjurie, or of beiring of falſe witneſſing, ſall never be reſſavit efterwart as witneſs to preive ony thing be his aith or teſtimonie. *Leg. burg. c.* 86.

Item, Ane woman may not paſs upon aſſiſe, or be witneſs, *Leg. burg. c.* 143. *De judic. c.* 44. Nather in ony inſtrument, teſtament, or contract, nor zit for preiving of ane perſoun's age, 27 *April.* 1540. 15 *Feb.* 1558. 8 *Julij*, 1558, *Ladie* Culluthie *contra Schir* Robert Carnegie, 2 *t. c.* 116. Nevertheles, gif thair be ony contraverſie tuiching the age of ony perſoun, the mother or the nurice may be reſſavit as witneſſis for preiving thairof. *Leg. Foreſt. c.* 15.

Item, He may be repellit fra paſſing upon ane aſſiſe, or being witneſs, quha has gevin counſal in the ſamin cauſe; he that is not of gude life and honeſt converſatioun; or he that is witneſs his alane, *quia ſolus teſtis non recipitur*; or he that will ſay aganis that thing quhilk he has deponit of befoir to be trew; or he that is ane pandrous,

drous, (*i. e. leno*;) or juglar, (*i. e. joculator*;) or commoun drunkardis in tavernis; or ony commoun player at cairtis or dyce, for gain and profit.

Item, All domeſtique perſounis, ſic as the wife, the husband, bairnis, ſervandis, dochter in law, and all thay quhom the partie may command be reſſoun of fatherlie powar, obedience or jurisdictioun, *De except. c.* 8, 13, 22. *Ex lib. Sconen.*

Item, He quha has bene Judge or Procuratour in the ſamin cauſe.

Item, All perſounis that ar of vile and unhoneſt office or vocatioun, as clengar of drauchtis, ſchaiver of bairdis.

Item, Ane reivar or robber.

Item, Na man may be witneſs in ony cauſe in the quhilk he may ather tyne or win, and may have ony profit and commoditie, *De except. c.* 8. *Ex lib. Scon.* Zit nevirtheles his kinniſman or freindis may be reſſavit to be witneſſis in the ſamin cauſe.

C. XXXV. Infamous perſounis.

ITEM, He that is convict of infamie may not be witneſs, *Leg. burg. c.* 143. And it is to wit, that all thay ar infamous perſounis quha ar condampnit or fylit for ony notabill treſpaſs, or refuſis the reule of the law of God, or contemnis the ſtatutis or diſcipline of the kirk.

Item, All theivis; all committaris of ſacrilege; all perſounis convict for ony capital crime; all brekkaris or violateris of graves and ſepulchris; all diſobedient perſounis to thair parentis, quha in all partis of the warld ar haldin and repute as infame.

Item, All inceſtuous perſounis; all menſlayeris, and menſworn perſounis; all receptaris of treſpaſſouris; all reivaris; all witches, ſorcereris, and adultereris; all rebellis and perſounis that ar fugitive fra juſt and leaſum hoiſtis and battellis; all wrangous occupyaris of uther men's rowmis and poſſeſſiounis; all thay quha wrangouſlie ſpuilzies, or fraudfullie takis away the gudis and faculties of the kirk; all thay quha provokis to anger the King contrare his ſubjectis that ar innocent; all thay quha accuſis thair brether, or ony perſoun, for ony crime, and preivis not the ſamin; all thay quha for thair treſpaſs ar excommunicat and ejectit furth of the halie kirk; all thay quha has at ane time ma wives nor ane; all thay quha makis publict repentance; and all utheris quhom the eccleſiaſtical or temporal law pronuncis and decernis to be infame perſounis; the quhilkis aucht not be promovit to ony halie functioun within the kirk of God, nor zit admittit at ony occaſioun to beir teſtimonie or witneſs. *Leg. burg. c.* 148. *Stat. Will. c.* 26. *De judic. c.* 75.

C. XXXVI. Of commiſſioun to be direct to ane uther countrey for examinatioun of witneſſis.

GIF ony man raiſis ane precept or ſummoundis aganis ane uther, he that executis the ſamin, and ſummoundis the defendar, as Schiref in that part, may not be witneſs in the cauſe for the perſewar; becauſe he beand executer and officiar in that part, and not creat the King's officiar, ſchews himſelf partial in making of the executioun, the ſamin not appertenand properlie to his office. 3 *Mart.* 1541, *The Vicar of* Kinghorn *contra Laird of* Seyfeild, 2 *t. c.* 69.

IN cauſe of improbatioun of ony inſtrument of reſignatioun, alledgit maid in the ſuperiour's handis, the ſuperiour ſould not be reſſavit

ſavit as witneſs for impreiving thairof. 1. Becauſe he is not witneſs inſtrumentar. 2. Be reſſoun the ſaid inſtrument beand improvin, he micht report profit thairby; becauſe the landis contenit in the ſamin wald then be in non-entres, and in his handis, as ſuperiour thairof. 13 *Mart.* 1541, Jonet Scot *contra M.* Robert Blair.

Item, Gif ony perſoun be ſoliſtar or mantenar, upon his awin expenſis, of ony cauſe, dependand betwix twa parties, na perſoun ſib to him within degré defendand, may be witneſs in the cauſe for him for quhom he is ſoliſtar, 16 *Maij*, 1542, John Dobie *contra Laird of* Glenbervie, 2 *t. c.* 92. Gif ony man ſtandis at the bar with ane uther, for furtherance and help of his cauſe, his menſervandis, kin and allya, may not be witneſſis to him quhom with he ſtandis, 20 *Julij*, 1551, *Lord* Drummound *contra* Hamiltoun, 2 *t. c.* 235. Curatouris gevin to ony minor *ad negotia*, may not be Jugeis nor witneſſis to the ſaid minor in ony actioun or cauſe, albeit thair be uther curatouris gevin to him *ad lites*, 18 *Mart.* 1555, *Laird of* Ledingtoun *contra* Corſtorphine, 2 *t. c.* 262. Gif ony ſummoundis, clame or alledgeance be admittit to probatioun, the quhilk neceſſarlie mon be provin be the teſtimonie of *Ingliſhmen*, be commiſſioun direct to ony Judge within *Ingland* to that effect; and the partie aganis quhom the ſamin is admittit to probatioun, have deidlie feid, particularlie with *Ingliſhmen*, be reſſoun of the ſlauchter of his freindis committit be thame, or of thair freindis committit be him, weir ſtandand then betwix the realmes; na commiſſioun ſould be direct, nor na *Ingliſhmen* reſſavit to beir witneſs in the ſamin mater, albeit peax be proclamit and ſtandand betwix the twa realmes the time in the quhilk the ſaid probatioun ſould be led and deducit. 10 *Decemb.* 1552, *Tutor of* Pitcur *contra Lord* Gray, 1 *t. c.* 716.

Ane tenent dwelland upon the conjunct-fear or Lady tiercear's landis, may not be witneſs in ony cauſe for the heritabill proprietar of the ſamin landis. 11 *Junij*, 1565, *Laird of* Lochlevin *contra Laird of* Arnot, 2 *t. c.* 307.

Item, Gif ony man ſummound divers and ſindrie perſounis, and thairefter paſſis fra ſum of thame, and perſewis his actioun aganis the reſt; the perſounis paſt fra may not be witneſſis to him in that cauſe. 3 *Mart.* 1566, *Laird of* Drylaw *contra indwellaris of* Dalkeith.

Item, Gif ony man's name be inſert in the principal ſummoundis, and he be not ſummoundit, nor indorſit upon, he may not be witneſs in that cauſe. 3 *Mart.* 1575, *King's Advocate* contra *Prioreſs of* Cauldſtrem, 2 *t. c.* 378.

C. XXXVII. Of depoſitioun of witneſſis.

WITNESSIS preive not ſufficientlie gif thay be diſcrepant or different fra utheris in thair depoſitiounis, *quia teſtis titubans habetur pro ignorante.*

Item, Gif thay ſchaw not ane ſufficient cauſe of the knawlege of thair depoſitioun.

Item, Gif thay be not examinat upon the interrogatouris producit be the partie deſyrand thame to be examinat thairupon.

Item, Gif thay be reſſavit, and depones not, beand ſworn, the time of thair reſſaving, to beir leil witneſſing in the mater. *Ult. Julij,*

Julij, 1566, Cambuſnethan *contra* Hamiltoun *of* Garren, 1 *t. c.* 1341.

Item, Gif the witneſs be not ſworn, his depoſitioun is of nane avail.

Item, Gif the witneſs deponis obſcurelie or confuſitlie, the ſamin is of nane avail; for he aucht and ſould depone certanlie, and without all ambiguitie.

Item, His depoſitioun is of nane avail, gif the partie be not lauchfullie warnit to heir him reſſavit, and to depone, or gif he deponis not *de viſu & auditu*.

Item, In depoſitioun of witneſſis mair credence ſould be gevin to honeſt perſounis, beand within dignitie, than to utheris, and to the rich nor to the puir; for the qualitie of the witneſſis ſould be rather conſiderit nor the multitude thairof. *De except. c.* 8. *ex lib. Scon.*

Item, Ane witneſs may not correct his depoſitioun, bot gif he do the ſamin incontinent befoir he paſs furth of the Judge's preſence.

Item, Ane witneſs deponand that he heard that quhilk he deponis of ony uther man, ſould not have faith, becauſe he ſould not depone *de alieno, ſed de proprio auditu*.

Item, Na witneſs ſould be reſſavit efter litiſconteſtatioun be lauchfullie maid. *De except. c.* 10. *ex lib. Scon.*

Anent probatioun be confeſſioun.

C. I. Of confeſſioun maid in judgment, and outwith.

CONFESSION maid in judgment, and acceptit be ony perſoun havand interes thairanent, or be ane uther in his name, is prejudicial to the maker thairof, and makis ſufficient probatioun and faith aganis him in all thingis that ar confeſſit. —— 1534, 1 *t. c.* 970.

Item, Confeſſioun maid be ony man outwith judgment, and inſtrument tane thairupon, is ſufficient probatioun aganis the maker thairof in judgment; as gif ony man, havand ony gudis or geir in his poſſeſſioun, confeſſit the ſamin to appertene to ane uther, and the uther, or ony in his name, tak inſtrument thairupon, the ſamin preivis ſufficientlie that the gudis pertenis to that uther. 7 *Junij*, 1559, Andro Rutherfurd *contra* James Dempſtar, 1 *t. c.* 1231.

C. II. Probatioun be publict fame or notorietie.

GIF ony libel, clame, exceptioun, or uther alledgeance, beand relevant, and the veritie thairof knawin opinlie and notourlie to the Lordis, na farder probatioun ſould be requirit for verificatioun thairof, *quia notorium debet allegari, non probari*. *Pen. Feb.* 1553, Gorthie *contra L.* Methven, 1 *t. c.* 1168.

Anent improbatioun.

C. I. Anent finding of cautioun in materis of improbatioun.

IMPROBATIOUN of writis, inſtrumentis or evidentis beand offerit, he that offeris him to impreive the ſamin, ſould find the ſamin day and time cautioun to the uther partie for the damnage

and ſkaith quhilk he ſall happin to ſuſtene, in cais he impreive not the ſamin. 15 *Decemb.* 1557, Walter Mackeſone *contra Laird of* Blebo, 1 *t. c.* 1213.

Mar. Reg. fol. 2. *poſt* 168. *act.* 4. 14 *Decemb.* 1557.

C. II. Anent cautioun to be fund be ane puir man.

In actioun and cauſe of improbatioun perſewit be ony puir man, quha for his povertie may not find cautioun conform to the act of parliament, it is ſufficient to him to give his aith that he ſall underly ſic puniſhment as the Judge ſall injoin to him in cais he failzie in improbatioun. 16 *Mart.* 1561, A. Alan *contra* Ro. Urie, 1 *t. c.* 1254.

C. III. Of ane that hes fund cautioun, quha thairefter deceiſſis.

Gif he that is cautioun and ſovertie for the panis of improbatioun deceiſſis *pendente lite*, the perſewar aucht and ſould of new find ane uther cautioun. 5 *Maij*, 1568, Catherine Lindſay *contra* John Nevoy, 1 *t. c.* 1354.

C. IV. Anent productioun of ane protocol.

Gif ony perſoun callis and perſewis ane uther for improbatioun of ane inſtrument, the defendar produceand the ſamin in autentique form, is not bund and obliſt to produce the protocol thairof, albeit the perſewar alledge that he cannot impreive the ſaid inſtrument, except the protocol wer producit and ſchawin to him. 22 *Mart.* 1560, *M.* John Scrimgeour *contra* William Bowar *of* Roſſie, 1 *t. c.* 1249.

C. V. Of improbatioun be ocular inſpectioun.

The Lordis of counſal, be ocular inſpectioun, may decern at the inſtance of the partie perſewand ony letter, contract, obligatioun, infeftment, evident, or uther writ, to be falſe and feinzeit, or, at the leiſt, to mak na faith, gif the ſamin manifeſtlie be razit in the dait, or ony uther ſubſtancial punct. *Pen. April.* 1542, *The King* contra *Laird of* Duntreth, 1 *t. c.* 596.

Item, Ane evident or inſtrument beand producit befoir the Lordis of counſal in ony cauſe of improbatioun, gif the ſamin, be ocular inſpectioun, be fund razit in the principal punctis thairof, the Lordis may decern the ſamin, *per Modò vidimus*, to mak na faith in times thairefter. 7 *Maij*, 1534, 1 *t. c.* 969.

Item, Gif ony perſoun callis and perſewis ane uther for improbatioun of ony evident, be reſſoun that the ſeill appendit thairto is falſe and feinzeit, becauſe the ſamin is dividit and brokin, the ane part fra the uther, for altering of the tag quhairby the ſamin is hungin; and thair be ony probabill reſſoun or conjecture, be ocular inſpectioun, or utherwayis, the Lordis of counſal may cauſe brek the ſamin for trying of the veritie: And gif thay find the tag cuttit and ſewit agane, or utherwayis ony notabill falſet in the ſamin walx or ſeill, thay may decern the ſamin to be falſe and feinzeit, and to mak na faith in time cuming. *Ult. April.* 1567, *Laird of* Cullernie *contra* Thomas Grundeſtoun, 1 *t. c.* 1065.

C. VI. Improbatioun may be perſewit be way of actioun or exceptioun.

It is leaſum to ony partie to impreive ony writ, contract or evident, be way of actioun or exceptioun; and the exceptioun of falſet or of improbatioun objectit be the defendar, aganis the executioun and indorſatioun of the ſummoundis, ſould not ſtop nor delay the principal proceſs. 23 *Feb.* 1554, *M.* Clement Little *contra* John Maxwell, 2 *t. c.* 136.

Ane

C. VII. Twa maneris of improbatioun, viz. directlie and indirectlie.

ANE inſtrument may be impreivin directlie be witneſſis inſert thairin, or indirectlie *per alibi*; as gif it be provin that ather of the parties was in ane uther place at the day of the alledgit taking of the inſtrument in the Notar's handis, 17 *Julij*, 1542, Johne Hering *contra* William Scot, 2 *t. c.* 105. Bot the direct maner of improbatioun of ane inſtrument is be the Notar and witneſſis, or maiſt part thairof, contenit in the ſamin. 27 *Julij*, 1552, 1 *t. c.* 1140.

C. VIII. In improbatioun of ony writ, na witneſſis ſould be reſſavit, bot thay that ar inſert thairin.

NA witneſſis ſould be reſſavit or admittit for direct improbatioun of ony inſtrument, contract, obligatioun, or uther writ or evident, bot thay quhilk ar inſert in the ſamin, except thay be for the maiſt part Notaris thameſelfis, or can perfectlie write or reid, and knaw the Notar, or writer of the evident; quha, albeit thay be not contenit in the ſamin, zit may be reſſavit and examinat, gif the inſtrument or evident be of the ſamin Notar's or perſoun's hand-writ quha is alledgit to have written the ſamin. 6 *Julij*, 1532, *King's Advocat* contra John Campbell.

Item, In all ſic cauſis of improbatioun, the perſewar aucht and ſould ſummound all his witneſſis at the firſt term, utherwayis gif he pretermittis ony at that time, he may not ſummound nor produce thame thairefter in the ſecund or thrid term. 21 *Feb.* 1540, *M.* Pat. Home *contra* Ro. Home, 1 *t. c.* 518, 354.

Item, Ane inſtrument may not be directlie impreivin be witneſſis not contenit thairintill, bot alanerlie be witneſſis inſert and in-writtin in the ſamin: And gif twa of thame affirmis the ſamin to be trew and autentique, it ſould have ſufficient faith, albeit the remanent of the witneſſis inſtrumentar, beand of greiter nombre, depone or ſay aganis the ſamin. 27 *April.* 1540.

C. IX. Contraverſie anent the namis, age and death of witneſſis.

IN all actiounis and cauſis of improbatioun of ane inſtrument, or evident, *per teſtes inſertos*, gif at the term of improbatioun thair ariſe ony doubt or contraverſie anent the perſounis of the witneſſis, be reſſoun that ma perſounis may be of ane name and ſurname, or zit concerning the age of the ſaidis witneſſis, or tuiching thair life or death; in thir caiſis the defendar ſould have to his probatioun quhat perſounis thay wer, and quhair thay dwelt, and alſwa that thay wer of perfeit age to beir witneſs, *viz.* fourtene zeiris compleit, and that thay wer on life the time of the making of the ſaid inſtrument, or evident. 2 *Junij*, 1554, *King's Advocat* contra Marion Bruce *and* Michael Balfour, 1 *t. c.* 1002.

C. X. Of witneſſis denyand the contentis of the inſtrument.

GIF the witneſſis contenit in ane inſtrument, beand ſworn and examinat, depone, that thay beand preſent at the alledgit time of the taking of the inſtrument in the Notar's hand, heard never ane word of ſic thingis as ar contenit thairin; the ſamin inſtrument ſould be decernit to be falſe and feinzeit, and to mak na faith in time cuming. *Ult. Julij*, 1546, 1 *t. c.* 1092.

C. XI. Of ane witneſs with the Notar affirmand the inſtrument.

GIF all the witneſſis contenit in ane inſtrument be deceiſt, except ane, quha, with the Notar, alledgis the ſamin to be trew, the ſaid inſtrument ſould on na wayis be decernit to be falſe and feinzeit. 18 *Decemb.* 1562, James Wod *of* Bonytoun *contra* Agnes Crawmond, 1 *t. c.* 128.

GIF

C. XII. Of ane witneſs denyand the executioun of the letter.

GIF ony Officiar, or Meſſinger, executis ony letter befoir twa witneſſis, and it happin the Officiar, with ane of the witneſſis, to deceis, the ſamin executioun or indorſatioun may be impreivin as falſe and feinzeit, gif the uther witneſs on life paſſis fra the ſamin. *Ult. Junij*, 1565, *The Quenis Advocat* contra Todrig, 1 *t. c.* 1330.

C. XIII. Of ane witneſs, with the Notar, affirmand the inſtrument to be true.

GIF twa witneſſis be inſert in ane inſtrument under the note and ſubſcriptioun of a Notar-publict, and ane of thame paſſis fra the ſamin, albeit the uther witneſs, with the Notar, affirm the ſamin to be of veritie, nevertheles the ſaid inſtrument ſall mak na faith; becauſe in all publict inſtrumentis, at the leiſt twa witneſſis, with the Notar, ar neceſſarlie requirit. 14 *Mart.* 1541, Jonet Scot *contra* Robert Blair, 2 *t. c.* 78.

C. XIV. Improbatioun of writtis or evidentis refuſit be the Judge.

IT is leaſum to ony partie to impreive ony writ, inſtrument, or evident, producit or uſit aganis him in judgment; and gif he offeris him to do the ſamin, and nevertheles the Judge refuſis to aſſign to him ane lauchful day or term to that effect, the proces, ſentence, and all that followis thairupon, is of nane avail, and may be reducit. 7 *Julij*, 1547, 1 *t. c.* 1082.

C. XV. Procuratorie of reſignatioun.

ANE procuratorie of reſignatioun beand improvin, as falſe and feinzeit, befoir the Judge ordinar, the infeftment and chartour following thairupon aucht and ſould be decernit, in the ſamin inſtance, null and of nane avail. 14 *Mart.* 1541, 1 *t. c.* 1073.

C. XVI. Raſure of ane evident.

Ane inſtrument or evident, raſit in ony ſubſtancial part, *viz.* in the ſubſcriptioun of the Notar, his name or ſirname, makis na faith. 20 *Mart.* 1540, 1 *t. c.* 1085.

C. XVII. Improbatioun of ane part of ane evident.

ANE inſtrument may be provin falſe and feinzeit in ane part, and juſt and trew in the remanent partis, *Ult. Julij*, 1540, 1 *t. c.* 1092. *Item*, It is leaſum to ony man to affirm and appreive ane part of ane inſtrument, or uther evident, to be leill and trew, for preiving of his intent, and to offer him to impreive ane uther part of the ſamin as falſe and feinzeit. 12 *Julij*, 1566, George Weir *contra Laird of* Ley, 2 *t. c.* 317.

C. XVIII. Improbatioun be way of actioun.

GIF ony man ſuſpectis that his partie adverſar has ony inſtrument that may be hurtful and prejudicial to him, he may obtene letteris be deliverance of the Lordis, and charge the Notar, alledgit maker thairof, and the faid partie, to produce the ſamin befoir thame, with certificatioun to thame, and thay failzie thairintill, the Lordis will decern the ſaid inſtrument, then as now, and now as then, to be falſe and feinzeit, and the makeris and uſeris thairof to be puniſht conform to the lawis of this realme. 14 *Julij*, 1552, 1 *t. c.* 1153.

C. XIX. Of ane ante-dait.

ANE inſtrument, writing, or evident, beand of ane ante-date, may be improvin thairfoir, and decernit to be falſe and feinzeit; and nevertheleſs the uſer thairof ſould be aſſoilzeit fra the pane of improbatioun, gif the ſamin was not ante-datit be him, 10 *Jan.* 1566, *Lord* Seytoun *contra Ladie* Hirdmeſtoun, 1 *t. c.* 1344. *Item*, Gif ony perſoun produce in judgment ane writing, for verificatioun of his

his intent or alledgeance, belrand expreſs day and dait, it is leaſum to the partie adverſar to impreive the dait of the ſaid writing, alledging that the ſamin was daitit efter or befoir, ſpeciallie in ſic writtis quhair the daitis ar of the ſubſtance of the matter. 18 *Feb.* 1489, *Erle* Bothwell *contra* Roger Craufurd, 1 *t. c.* 47.

C. XX. Impreiving of the depoſitioun of witneſſis.

GIF ony witneſſis producit and examinat for preiving of the libel or alledgeance, deponis thairanent, it is leaſum to the partie defendar to ſummound the ſaidis witneſſis, and in like maner to the partie at quhais inſtance thay wer producit, to heir and ſé thair depoſitiounis impreivin, and thairefter to be puniſt, in exampil of utheris, for the ſamin, and thair depoſitiounis to mak na faith; as gif a witneſs deponis and ſweiris, that he dwellis in ſic a place, with ſic a man, and the defendar alledge the ſamin not to be of veritie, affirmand him to dwell in ane uther place, and with ane uther man, he may raiſe ſummoundis in maner foirſaid, for impreiving of his depoſitioun in that part; and thairfoir his depoſitioun in the principal cauſe to mak na faith; and baith the parties compeirand, and ilk ane of thame affirmand the witneſs to dwell as ſaid is, the ſamin ſould be referrit *hinc inde* to thair probatioun. 23 *Jan.* 1558, Robert Ker *contra* Ro. Fleſchour *and utheris*, 1 *t. c.* 761.

C. XXI. Taciturnitie and ſilence ſtoppis improbatioun.

GIF ony perſoun be callit befoir ane Judge in ony actioun or cauſe, and his partie perſewar producis aganis him in judgment ony chartour, infeftmentis, contractis, inſtrumentis, or quhatſumever uther evidentis or writingis, and the defendar at that time object nathing aganis the ſamin, he beand efterwart callit and perſewit be the ſamin perſoun, the defendar on na wayis aucht and ſould be heard to impreive the ſaid evidentis and writis as falſe and feinzeit; becauſe he beand callit before as ſaid is, and compeirand perſonallie, or be his Procuratour, alledgit nor objectit nathing in the contrare of the ſaidis evidentis the time of the productioun thairof, 12 *Jan.* 1501, *King's Advocat* contra William Douglas, 1 *t. c.* 116. And ſiclike, gif ony man be lauchfullie ſummoundit to compeir at ane certane day befoir ane Judge, to heir and ſé ony writing or evident autenticklie tranſumit, and he failzie to compeir to that effect, he ſould not be heard efterwart to impreive the ſaid principal writing or evident be ony maner of improbatioun. 13 *Feb.* 1541, George Home *contra* Robert Leirmonth, 1 *t. c.* 536.

C. XXII. He that fulfillis the contentis of ony evident, may not impreive the ſamin thairefter.

GIF ony perſoun makis ane contract, obligatioun, infeftment, or uther writ or evident, and thairefter fulfillis ony part thairof, or makis payment of ony thing contenit thairin, he ſall never be heard to alledge the ſamin to have bene, or to be, falſe and feinzeit, or to impreive the ſamin in ony time thairefter. 23 *Julij*, 1544, Johne Creichtoun *contra* Elizabeth Martine.

C. XXIII. He that has ſubſcrivit, may not impreive.

GIF ony perſoun offeris him to impreive ony evident or writ, he ſall not be heard to do the ſamin, gif it be fund and provin *per comparationem literarum*, or be his awin confeſſioun, or be the ſentence and declaratour of ane Judge, that the ſamin is ſubſcrivit with his hand. 1 *Feb.* 1541, 2 *t. c.* 51.

C. XXIV. Taciturnitie of the predeceſſour ſtoppis the ſucceſſour to impreive.

GIF ony perſoun intentis ſummoundis for reductioun of ony decrete gevin aganis his father or predeceſſour, alledgeand the ſamin to be gevin be virtue of ane writ or evident quhilk he alledgis to be falſe and feinzeit, he aucht nor ſould not be admittit to propone the ſamin for reductioun of the ſaid decrete; becauſe his father or predeceſſour, to quhom he is air, or, at the leiſt, ſucceſſour, proponit not, in the firſt inſtance, ony ſic exceptioun of falſet, bot rather uther exceptiounis, quhilk tacitlie, and in effect, ratifyit and appreivit the ſaid writ or evident to be of veritie; and thairfoir ſeing that his ſaid predeceſſour, gif he wer on life, micht not propone the ſaid exceptioun of falſet in the ſecund inſtance, he ſucceidand in his place ſould not be heard to uſe the ſamin. *Ult. Julij*, 1542, *Laird of* Laurieſtoun *contra* David Wod *of* Craig, 2 *t. c.* 127.

C. XXV. Of the partie offerand him to impreive, and the uther to appreive.

GIF ony perſoun offeris him to impreive ony inſtrument, contract, or uther evident quhatſumever, his partie adverſar offerand him to appreive the ſamin to be leill and trew, ſould not be heard to do the ſamin, nor na term ſould be gevin and aſſignit to him for the approbatioun thairof; bot he may inſtantlie produce ſic writtis as he has and will uſe to fortifie and confirm the ſamin. 12 *Mart.* 1562, James Chiſholme *contra Ladie* Lundie, 2 *t. c.* 302.

C. XXVI. Failzie in improbatioun.

GIF ony perſoun failzies in improbatioun of ony writ, chartour, or evident, producit aganis him in ony actioun or cauſe, condemnatour ſould be gevin aganis him in the principal cauſe. 9 *Maij*, 1533.

Anent ſentence, and executioun thairof.

C. I. Propertie of ane gude ſentence.

ALL lauchful dome and ſentence gevin be ane Judge, ſould have thir properties and conditiounis: 1. That the day quhairon the ſamin is gevin be lauchful, and not ane haly and forbidden day. *Item*, That the place quhairin the ſamin is gevin be lauchful. *Item*, That the court be lauchful. *Item*, That the Judge be lauchful. *Item*, That the proces be lauchful. *Item*, That the ſentence gevin be the Judge be in ane lauchful and competent form and maner. *Quon. attach. c.* 37.

C. II. Of ſentence gevin aganis divers and ſindrie perſounis.

ANE clame, or libel, beand intentit and perſewit aganis divers and ſindrie perſounis, for divers and ſindrie cauſis expreſlie contenit in the ſamin, the Judge may divide the libel, and give decrete condemnatour aganis ony ane of the perſounis contenit thairintill, and may give abſolvitor of ane uther part in favouris of ane uther perſoun, and put the reſt under continuatioun for probatioun to be uſit, led and deducit aganis the utheris, for ſic materis and cauſis as thay ar perſewit for. 10 *Mart.* 1533, 1 *t. c.* 919.

C. III. Of ſentence gevin on a libel, contenand mair in the concluſioun nor in the narrative.

GIF ane libel contene certane punctis and clauſis in the narratioun and concluſioun, and ane uther clauſe in the concluſioun allanerlie, quhilk was not in the narratioun, the Judge may not condemn the defendar in the punctis quhilk wer in the narratioun and in the concluſioun, and give abſolvitor fra the clauſis contenit in the ſaid concluſioun allanerlie; becauſe the ſummoundis concludit

dit mair nor the narratioun thairof proportis. 17 *Novemb.* 1533, 1 *t. c.* 943.

C IV. *Sententia debet eſſe conformis libello.*

THE ſentence ſould be conform to the libel; and thairfoir, gif the libel be ſpecial, and the ſentence general, the ſamin is of nane avail. 3 *Maij*, 1575, *M.* George Lundie *contra Lord* Methven, 2 *t. c.* 372.

C. V. Sentence may be gevin aganis the contumax.

ITEM, Gif it happinis ather of the parties (beand lauchfullie warnit and chargit be the Judge to ane certane day and place, to heir ſentence pronuncit and gevin) to be abſent the ſamin day, for quhatſumever cauſe, he beand lauchfullie warnit thairto, as ſaid is, the dome and ſentence ſould be gevin aganis him be reſſoun of his abſence and non-defence, *Stat.* 2. *Ro. Br. c.* 34. *Mod. ten. cur. c.* 9. Bot gif the partie compeir within ane ſchort time efter the pronunciatioun of the ſentence, and preive ane ſufficient cauſe of his abſence, ſic as bodilie ſeiknes, and impediment of the ſea, water, ſtorm, winter, theives or reivaris, the ſentence ſould be retreitit, and the partie reſtorit *in integrum*. *De except. c.* 15. *ex lib. Scon.*

C. VI. Decrete obtenit aganis ane quha thairefter happinis to deceis.

DECRETE beand obtenit aganis ony perſoun, decernand him to content and pay to ane uther certane ſowmis of money, or uther debt, and he aganis quhom the ſamin is gevin thairefter deceiſſis, na payment thairof beand maid be him the time of his lifetime, his airis of line, in ſa far as thay ar reſponſal, and his air of tailzie, gif ony be, *in ſubſidio*, in ſa far as the airis of line ar not reſponſal, may be callit and convenit to mak payment of the ſaid decrete to the obtenar thairof, or his executouris. 15 *Decemb.* 1565, Iſobel Anderſon *contra* Margaret Roſſe *and utheris*, 1 *t. c.* 842.

C. VII. Decrete gevin aganis divers perſounis, quhairof ane happinis to deceis.

ANE decrete gevin aganis twa perſounis, *æquè & principaliter*, and it happin ane of thame to deceis befoir the fulfilling thairof, the ſaid decrete ſould have and reſſave executioun aganis the uther perſoun that is on life, at the leiſt, for the equal half thairof. 26 *Julij*, 1566, *Laird of* Kirkmichael *contra* David Gordoun, 1 *t. c.* 1337.

C. VIII. Decrete tranſferrit in the airis and ſucceſſouris of the parties.

ANE decrete, contract or obligatioun not beand fulfillit or obeyit be the principal partie, befoir his deceis, may be transferrit be decrete of the Judge ordinar, *tam activè quàm paſſivè*, in thair airis, enterit as airis, or in ane *qui gerit ſe pro herede*, or executouris or aſſignayis, efter the nature and qualitie of the ſamin: And the ſamin beand transferrit, aucht and ſould have ſic executioun in thair perſounis, as it micht have had in the perſounis of the principal parties induring thair lifetimes, 25 *Junij*, 1532, Thomas Torrie *contra* Thomas Weir. 21 *Mart.* 1538. *Dicitur aliquis gerere ſe pro herede*, be intrometting with airſchip movabill gudis, as air to him that is deceiſt, or gif he dois ony uther thing as air to him. 3 *Feb.* 1558, Alexander Burnet *contra Laird of* Kinfaunis, 1 *t. c.* 597.

C. IX. Decrete gevin at the inſtance of him quha thairefter is denuncit rebel.

ANE decrete beand gevin in favouris of ony partie quha thairefter is denuncit rebel to our ſoverane Lord, and put to his horn, he may not, at his awin inſtance, put the ſamin to executioun nor poind,

poind and diſtreinzie his debtour's gudis and geir thairfoir: And gif he ſtoppis ony Officiar in poinding thairfoir, he incurris na danger nor perrel of deforcement thairby; becauſe, in that ſamin inſtant time that the obtenar of the ſaid decrete was declarit rebel, the debtour, aganis quhom the ſamin was obtenit, on na ways remanit debtour to him, bot became debtour for the contentis of the ſaid decrete to our ſoverane. 20 *Jan.* 1550, *Quene's Advocat and* Andro Kilpatrik *contra* William Kilpatrik, 1 *t. c.* 698.

C. X. Of ather partie deceiſſand befoir or efter obtening of the decrete.

DECRETE beand obtenit be ony perſoun, quha thairefter deceiſſis, the ſamin aucht to have na executioun until the time it be transferrit in his air or executour, *activè*, efter the nature and qualitie of the decrete: And ſiclike it is to be underſtuid, gif the perſoun, aganis quhom the ſaid decrete is obtenit, happinis to deceis efter the obtening thairof; for in this cais the ſamin ſould be transferrit in his air or executour *paſſivè*: And the like is to be underſtuid, gif the perſewar or defendar deceis *pendente lite*, efter the intenting of the actioun, 20 *Jan.* 1532, 1 *t. c.* 691. *Item*, Divers and ſindrie perſounis beand perſewit conjunctlie in ony actioun or cauſe, gif it happinis ony of the defendaris to deceis during the dependance of the pley, na farder proceſs ſould be led aganis the remanent perſounis defendaris, untill the time the actioun, in the ſamin eſtait in the quhilk it is at that time, be transferrit *paſſivè* in his air quha is deceiſt. 9 *Decemb.* 1549, 1 *t. c.* 1101.

C. XI. Lauchful renunciatioun ſtoppis transferring.

NA decrete, contract, nor obligatioun, ſould be transferrit *paſſivè*, in ony man, as air or executour to ony uther, gif he has in dew time, befoir the raiſing of ony letteris aganis him, renuncit, or gif he, *re integrâ*, inſtantlie the time of the deſyring of the tranſlatioun, befoir ony Judge, renuncis to be air or executour befoir the ſamin Judge, 19 *Mart.* 1551. *Ult. Junij*, 1563, *M.* Johne Leirmonth *contra* Johne Parrok, 1 *t. c.* 1194. *Item*, Ane decrete gevin aganis ony man may not be transferrit *paſſivè* in ane air, as air to him, gif he be not provin to have enterit air to him, or ellis to have bene chargit, and to have refuſit. 24 *Julij*, 1565, Barnbougal *contra* Creichtoun, 1 *t. c.* 1333.

C. XII. Of executioun of ane decrete gevin anent deliverie of houſis.

DECRETE beand gevin, with letteris conform thairto, aganis ony perſoun, for delivering of ane houſe, tour, caſtel or fortalice, and, efter the pronuncing of the ſaid decrete, or efter the executioun of the ſaidis letteris, he, aganis quhom the ſamin is gevin, waiſtis, deſtroyis, caſtis down or makis war the ſaid houſe, in all or in part; he thairefter deſyrand the executioun of the ſaid decrete, or letteris, to be ſuſpendit aganis his partie offerand to fulfil and obey the ſamin, and to find cautioun to that effect, ſould on na wayis be heard thairintill, bot the ſaid decrete and letteris ſould have farder executioun aganis him, notwithſtanding the ſaid offer; becauſe he may not reſtore the ſamin als gude as it was the time of the geving of the ſaid decrete, 20 *Mart.* 1566. And decrete gevin becauſe it was ſufficientlie preivin. 12 *Decemb.* 1567, William Home *contra* William Lauder, 1 *t. c.* 855.

C. XIII. Decrete gevin aganis a man

ANE decrete gevin aganis ony man, quha, efter the geving thair-

of

of, happinis to be tane priſoner be ony enemie of this realme, his adverſar ſall have executioun aganis him, notwithſtanding that he is priſoner and captive furth of the realme in the enemies handis. 12 *Decemb.* 1542, *Laird of* Innes *contra Lord* Oliphant, 2 *t. c.* 131. quha thairefter happinis to be tane priſoner be the enemie.

ANE decrete gevin aganis ane minor, his tutoris aud curatouris, with letteris of horning conform thairto, intimatioun allanerlie of the ſaidis letteris of the four formis ſould be maid of the executioun of ilk charge to the tutor or curatour, and the horning ſould be execute upon the minor, as principal partie, and not upon his tutor or curatour; becauſe the tutor or curatour is choſin for to ratifie, appreive and conſent to all thingis concerning the minor's weill, and thairfoir aucht nor ſould be compellit to mak anſwer for ony of his debtis or actiounis, nor zit ſould be put to the horn thairfoir in ony ſort. *Ult. Julij*, 1499, *Lord* Boyde *contra Erle of* Eglintoun, 1 *t. c.* 745. C. XIV. Executioun of ane decrete obtenit aganis a minor.

ALL ſentence and rolment of court gevin be ony Schiref, Stewart, Baillie, Proveſt, or ony uther Judge within this realme, aucht and ſould be inſert in the court buik, extractit furth thairof, and ſubſcrivit be the Clerk of court; utherwayis, albeit the ſamin be ſubſcrivit be the Judge, it is of nane avail, and makis na faith in judgment, nor outwith the ſamin. *Pen. April.* 1535, Thomas Shoriſwod *contra* David Spottiſwod, 1 *t. c.* 474. C. XV. Regiſtratioun, extractioun, and ſubſcriptioun of a decrete.

IT is to wit, that all Jugeis, befoir quhom ony actioun or cauſe is lauchfullie recoverit, ſould tak ſecuritie of the ſowme recoverit befoir him, to be payit to the partie within courſe and term of law: And gif he failzies, he is haldin of the law to ſatisfie the partie obtenar of the decrete in all punctis and contentis thairof, within lauchful time, like as he wer debtour himſelf, *Mod. ten. cur. c.* 5. *Item*, Gif the partie perſewar obtenis, be decrete of court, the debt auchtand to him, the Judge ſall tak ane ſure pledge or borgh for the debtour that tint the cauſe, for ſure payment of the debt, togidder with the harmis and reſſonabill damnage quhilk was contenit in the ſamin, to be maid to him within fiftene dayis; the quhilk gif the debtour refuſis to do, he may be diſtreinzeit be the Judge thairfoir: Bot gif the debtour grant and confeſs the debt, and has not ſufficient gudis and geir to pay the ſame, it is leaſum to him to ſwear himſelf bair-man. *Quon. attach. c.* 12. C. XVI. Executioun of ſentence by ſovertie of the partie loſer.

SUSPENSIOUN of decreitis ſould not be grantit, without offer be maid to the partie: And in cais of his refuis, the ſum contenit thairin to be conſignit. *Ja.* VI. *fol.* 11. *act.* 15. 22 *Maij*, 1584. C. XVII.

THE partie defendar tynand the pley, payis the partie's coiſtis, and ane unlaw of xl. *s.* *Ja.* IV. *fol.* 92. *act.* 52. 18 *Maij*, 1491. C. XVIII.

DECRETE beand gevin aganis ony perſoun, with letteris of poinding conform thairto, and the Officiar alledge that thay have ſerchit and ſocht, and can find na perſounis quha durſt tak on hand to intromet with and threſh the cornis pertening to him aganis quhom the decrete is gevin, the Lordis, at the deſire and inſtance of the partie, C. XIX. Anent threſhing out of men's cornis be virtue of a decrete.

partie, ſall direct thair letteris, charging all the threſhouris of the countrey adjacent, as thay ſall be requirit be the Officiar, to paſs and threſh out the ſaidis cornis, upon the expenſis of the awner thairof, aganis quhom the ſaid decrete was pronuncit. 7 *Mart.* 1541, *Laird of* Innerleith *contra* Alexander Home, 1 *t. c.* 871.

C. XX. Anent intereſt offerit be him aganis quhom decrete is obtenit.

ANE decrete beand gevin aganis ony perſoun, with letteris conform thairto, for fulfilling thairof, and it be not in his powar to fulfill and obey the ſamin, gif he offeris befoir ane Judge the intereſt and damnage ſuſtenit, or quhilk may be ſuſtenit be the obtenar of the ſaid decrete, throw the non-fulfilling of the ſamin; and in like maner offeris him reddie to find cautioun for payment and fulfilling of the ſaid intereſt, the ſamin beand modifyit and liquidat be the ſaid Judge, the executioun of the ſaid decrete ſould ceis aganis him, and be ſuſpendit, the ſaid cautioun beand fund, 19 *Decemb.* 1562, Alexander Home *contra Mr.* Andro Home. Bot gif he, aganis quhom the decrete is gevin, may ony wayis fulfill the ſamin, or gif the ſamin may be eaſilie done be him, he ſould not be releivit fra the executioun thairof, albeit he offer the intereſt in maner foirſaid. *Ult. Feb.* 1541, Reid *contra Abbot of* Melros, 1 *t. c.* 1015.

C. XXI. Of him that obeyis the command of the letteris efter the four chargeis.

LETTERIS of four formis gevin conform to ane decrete, aganis ony perſoun, and beand execute aganis him in all the four charges, be reſſoun of his diſobedience or contumacie, it is not leaſum to him, efter the iſche and end of the dayis quhairupon he is chargit *purgare moram*, and thairby to eſchew the pane of the letteris: And mairover, albeit he, efter the feird charge, had obeyit the letteris, zit the King, be reſſoun of his contumacie and contemptioun, may juſtlie cauſe him to be denuncit rebel, and confiſcat all his movabill gudis; becauſe *in deciſoriis judiciorum*, ſic as executioun of ſentence, and in criminal treſpaſſis, ſic as contumacie, diſobedience, and contemptioun of the King's authoritie, or zit quhair ane certane day is affixt, or ane ſpecial pane injoinit, as uſe is in letteris of four formis, *non admittitur purgatio moræ.* 18 *Feb.* 1546, *Lord* Lindſay *contra M.* Alex. Kynninmonth, 2 *t. c.* 175.

C. XXII. Quhat gudis ſould be firſt ſocht for executioun of ane decrete.

IN executioun of decretis, the movabill gudis pertenand to the debtour, aganis quhom the decrete is gevin, aucht and ſould be firſt ſerchit and ſocht, and, failzieing thairof, his landis, and uther immovabil gudis, quhilkis failzieing, the debtis auchtand to the ſaid debtour be utheris, 25 *Maij*, 1549, William Boſwell *contra M.* Robert Creichtoun, 2 *t. c.* 210. *Item*, Gif ony Officiar, be virtue of letteris of poinding paſt upon ane decrete, or for ony uther cauſe, was poindand or appryſand ony meit-almerie, or ony uther gudis or geir within ane houſe, feſnit and affixt in the wall, he may be leaſumlie ſtoppit to do the ſamin, without ony pane or perrel of deforcement; becauſe the ſaid almerie or inſicht gudis, beand feſnit and affixt in the wall of the houſe, may not be poindit and diſtreinzeit as movabill gudis, 1 *t. c.* 848.

C. XXIII. Executioun of ane decrete that obliſſis baith parties

GIF ane contract, *hinc inde obligatorius*, contenand certane heidis or deidis, quhilk ather of the parties ſould give or do to utheris, be regiſtrat in the bukis of ane ordinar Judge, nane of the parties may

may deſire executioun thairof aganis the uther, bot gif he firſt fulfill and obey his part thairof, or offer him reddie to do the ſamin; except it be manifeſt be the form and tenour of the contract, or be ſum ſpecial proviſioun, that the partie aganis quhom executioun is ſocht, ſould firſt obey and fulfill his part, 19 *Novemb.* 1565, *Mr.* James Creichtoun *contra* Martin Creichtoun. For in this cais, he quha firſt ſould fulfill his part may be callit for fulfilling thairof, albeit the uther partie have not fulfillit his part, nor zit offer him reddie to do the ſamin. 17 *Feb.* 1548, *Laird of* Kerſe *contra* George Panter, 2 *t. c.* 308.

hinc inde to utheris.

DIVERS and ſindrie decreitis beand obtenit be divers and ſindrie perſounis aganis ony man, gif the obtenaris thairof cauſe arreiſt his maillis, fermis and dewties in his tenentis handis, for payment to be maid to thame thairof, the tenentis aucht and ſould pay firſt to him quha obtenit the firſt decrete; and he beand fullilie and compleitlie payit, thay ſould mak payment to him quha obtenit the ſecund decrete; and he beand compleitlie payit, thay ſould conſequentlie pay the reſt of the creditouris quha obtenit decreitis, and cauſit arreiſtmentis to be maid, efter the ordour and prioritie of time in obtening of thair decreitis. 5 *Junij*, 1538, *Erle of* Craufurd's *tenentis* contra James Rollok *and utheris*, 1 *t. c.* 501.

C. XXIV. The firſt decrete ſould have firſt executioun.

DECRETE beand obtenit aganis the father, and ane Officiar, be virtue of letteris direct conform thairto, poindis and diſtreinzies ony gudis and geir pertening to the ſone for executioun thairof, gif the father and the ſone hald the ſaidis gudis, and ſuffer thame not to be poindit, the ſone perſonallie preſent, and affirmand and makand faith that the ſamin gudis pertenis to him as his awin proper gudis, and ar, ſiclike as thay wer of befoir, be the ſpace of twa monethis, in his poſſeſſioun, the ſamin beand admittit to his probatioun, and lauchfullie provin be him, nather he nor his father incurris ony pane of deforcement; becauſe, he reteinand and with-haldand his awin proper gudis and geir, and his father aſſiſtand and fortifieand him thairintill, did na wrang in doing of the ſamin. 25 *Maij*, 1565, *The Quene* contra *zoung Laird of* Erlishall, *and his ſone*, 1 *t. c.* 835.

C. XXV. Ane man's gudis and geir may not be poindit be virtue of a decrete obtenit aganis ane uther man.

GIF ony Judge gevis and pronuncis ane decrete aganis ony perſoun dwelland without his juriſdictioun, the quhilk thairfoir he may not put to executioun, the obtenar thairof ſall rais our ſoverane Lordis letteris, charging the ſaid perſoun to obtemper and obey the ſamin, or ellis to compeir befoir the Lordis of counſal, and ſchaw ane reſſonabill cauſe quhy he ſould not do the ſamin; the quhilk gif he failzies to do, and compeiris not, the Lordis ſall direct letteris of four formis aganis him for fulfilling of the ſamin, 21 *Octob.* 1532, *N.* contra *Laird of* Craighall, 1 *t. c.* 601. *Item*, Ane decrete beand gevin be ane Judge aganis ony partie not havand landis, gudis nor geir ſtreinzieabill thairfoir, within the juriſdictioun of the ſaid Judge, nor zit dwelland within the ſamin, may not be put to executioun be the ſaid Judge, gevar thairof; becauſe the Judge hes na powar to poind without his awin juriſdictioun; and thairfoir the Lordis of counſal, quhais juriſdictioun extendis

C. XXVI. Anent decrete of a Judge put to executioun aganis ony perſoun without his juriſdictioun.

over

all our ſoverane Lord's liegis, aucht and ſould direct thair letteris to ane Officiar of armis, for execution of the ſaid decrete. 24 *Jan.* 1533, 1 *t. c.* 954.

C. XXVII. Of ane Judge, quha beand requirit, refuſis to put ane decrete to execution.

GIF ony perſoun obtenis ane decrete befoir ane Judge, with letteris of the Lordis of counſal conform thairto, direct to ony Schiref, Stewart, Baillie, or ony Judge within this realme, to cauſe the ſamin decrete be put to executioun, and to cauſe the partie obtenar thairof to be fullilie ſatisfyit anent all punctis of the ſamin, and the ſaid Schiref, or Judge, beand requirit to that effect, refuſis, poſtponis, neglectis or delayis to do the ſamin, he aucht and ſould, of his awin proper gudis and geir, mak payment of all thingis contenit in the ſaid decrete to the obtenar thairof, and may be poindit and diſtreinzeit be him thairfoir. 6 *Mart.* 1532, Thomas Grundeſtoun *contra Schiref of* Linlithgow. 17 *Feb.* 1534, Andro Auchinleck *contra Bailie of* Coninghame. 23 *Jan.* 1533. 8 *Julij*, 1501, Marion *Ladie* Terreglis *contra Schiref of* Drumfreis, 1 *t. c.* 106.

Item, Ane burges of ony burgh within this realme beand decernit be decrete of the Lordis to pay ony man ane certane liquidat ſowme of money, the Aldermen and Baillies of the ſaid burgh may be chargit be our ſoverane Lordis letteris to poind and diſtreinzie him thairfoir, and cauſe the partie, obtenar of the ſaid decrete, to be payit thairof at the day expremit in the ſaidis letteris; the quhilk gif thay failzie to do, the Schiref, at the ordinance of the ſaidis Lordis, may poind the ſaid Aldermen and Baillies proper gudis and geir, for the ſaid ſowme, and cauſe the partie be ſufficientlie ſatisfyit thairof. 21 *Octob.* 1509, Andro Udward *contra* John Lauder. 11 *April.* 1511, James Wallace *contra Baillies of* Kinghorne, 1 *t. c.* 149.

Item, Ane decrete beand obtenit, with letteris conform thairto, direct to ony Proveſt or Baillies of ony burgh, or ony uther our ſoverane Lord's Officiaris, quha ar removabill fra thair offices be the law of this realme, and thay beand requirit, refuis or poſtpone to put the ſamin to executioun, thair reddieſt gudis, geir or landis may be poindit or compryſit for the ſowmis contenit in the ſaid decrete, quhidder thay be zit in the ſaid office, or diſchargit thairof, or utheris electit and put in thair place. 15 *April.* 1535, George Henderſon *contra the Proveſt and Baillies of* Aberdene, 1 *t. c.* 473.

C. XXVIII. Of him quha enteris in ward to ſtop or delay the executioun of ane decrete aganis him.

DECRETE beand gevin befoir ane Judge, aganis ony perſoun, for payment of ony liquidat ſowme or debt, with letteris executoriallis thairupon, under the pane of warding of his perſoun, gif he beand denuncit rebel, and put to the horn, enteris his perſoun in ward conform to the ſaidis letteris, intending thairby to evacuat and eſchew farder executioun of the ſaid decrete aganis him, ſic as horning, poinding or compryſing, the Lordis, at the inſtance of the partie in quhais favouris the decrete is gevin, may direct thair letteris to poind and diſtreinzie the ſaid perſounis movabill gudis and geir, aganis quhom the decrete is gevin; and failzieing thairof, to appriſe his landis and heritage; providing alwayis that the ſaid perſoun be releivit out of ward, and put to libertie. *Pen. Novemb.* 1558, David Galbraith *contra* John Edingtoun, 1 *t. c.* 634.

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C. XXIX. Executioun of twa decretis, ilk ane contrare to uther.

GIF ony Judge within this realme give ony decretis, direct contrare to utheris, at the inſtance of divers and ſindrie parties, and ather of the ſaidis parties obtenis letteris of the Lordis for fulfilling and executioun thairof, baith the ſaidis letteris aucht and ſould be *ſimpliciter* ſuſpendit, ay and quhill it be knawin quhilk of the ſaidis perſounis has maiſt richt, or undoutit titill. 21 *Maij*, 1533, 1 *r. c.* 422.

C. XXX. Finding of cautioun for ſuſpenſioun of ane decrete.

LETTERIS of horning beand execute aganis ony perſoun, and he denuncit rebel, and put to the horn, for not fulfilling of ane decrete gevin aganis him, the ſamin ſould be ſuſpendit to ane certane day, and the perſoun put to the horn relaxt thairfra, he findand ſufficient cautioun to obey and fulfill the ſaid decrete in all punctis. *Ult. April.* 1534. 6 *Feb.* 1534, 1 *r. c.* 966.

C. XXXI. Suſpenſioun for non liquidatioun of victuallis.

GIF letteris of horning be direct aganis ony perſoun, chargeing him to mak payment of certane victuallis auchtand be him to ane uther, the ſamin aucht and ſould have na executioun aganis him, bot ſould be ſuſpendit unto the time that the price thairof be liquidat befoir ane Judge. 18 *Decemb.* 1540, 1 *r. c.* 1502.

C. XXXII. Suſpenſioun ſtoppis executioun.

LETTERIS obtenit be ony man for the ſuſpenſioun of the executioun of ony decrete gevin aganis him, dependand undecydit, na innovatioun ſould be maid in the cauſe: And gif, induring the dependance of the ſaid ſuſpenſioun, he aganis quhom decrete was gevin, be denuncit rebel, and put to the horn, for not fulfilling and obeying of the ſamin, the ſaid denunciatioun is of nane avail. *Ult. Mart.* 1563, *Laird of* Lundie *contra Lord* Lindſay, 1 *r. c.* 1297.

C. XXXIII. Executioun of ane decrete of removing.

ANE decrete of removing beand gevin aganis ony perſoun, to deſiſt and ceis fra ony landis, and to devoyd and red himſelf, his gudis and geir, fra ony houſis and tenementis, gif he refuſis and delayis to do the ſamin, beand lauchfullie chargit thairto, be precept or letteris of the Judge ordinar, befoir quhom the ſaid decrete was obtenit; the partie obtenar of the ſaid decrete may require the ſaid Judge, quha aucht and ſould, be himſelf or his deputis, paſs to the ground, and compel him be force to remove, be way of deid, and put him aff, and hald him aff the ſamin, with his cattel, nolt, ſcheip, horſe, and all uther his beſtial; and, gif neid beis, to convocate our ſoverane Lord's liegis for aſſiſting him in the executioun of his office, to the effect foirſaid; and at the ſamin time to require him to tak away his inſicht, and all uther utenſile and domicile, and movabill gudis, gif thay be not takin away of befoir: And gif he refuſis, the ſaid Judge ſall cauſe his Officiaris mak opin duris of the ſaidis houſis and tenementis, and paſs thairin, takand with him ane famous Notar and witneſſis, and mak ane inventar of all the gudis and geir for the time beand within the ſaidis houſis and tenementis: And gif the awner thairof, nor nane in his name, havand powar, cumis to reſſave the ſaidis gudis, he may lay furth all the ſaidis gudis and geir befoir the dure upon the ground, without danger, pane or perrel of law, albeit the ſaidis gudis, in all or in part, thairefter rot, periſh, decay, be ſtollin, or takin away be utheris. 4 *Mart.* 1565,

Margaret Erskine *contra Laird of* Glenbervie and utheris, 1 *t. c.* 1064.

C. XXXIV. Of cautioun for obeying of a decrete of removing.

ANE decrete of removing beand obtenit aganis ony perſoun, with letteris conform thairto, and he find cautioun and ſowertie to flit and remove fra the landis, and to deſiſt and ceis fra all occupatioun or poſſeſſioun thairof in times cuming, under ane certane pane modifyit be the Judge, to be payit be him, or his ſowertie, als oft as he cumis in the contraventioun of the ſaid decrete; gif efterwart in ony time it be ſufficientlie provin, that he aganis quhom the ſaid decrete was gevin, or ony in his name, of his cauſing, command, aſſiſtance, or ratihabitioun, has contravenit the ſaid decrete, his cautioner and ſowertie may be decernit to have incurrit the ſaid pane of contraventioun; and thairfoir, to content and pay the ſamin to the obtenar of the ſaid decrete, *viz.* all and haill that pane, for ilk time, that the ſaid decrete is provin to be contravenit; as gif the ſamin be contravenit be divers deidis upon twa dayis, ilk ane immediatlie followand uther, the ſowertie ſould be decernit to pay the pane for everie ane of the ſamin twa dayis. 5 *Junij*, 1568, Helene Davidſone *contra* Catherine Steuart, 1 *t. c.* 864.

C. XXXV. The difference betwixt the executioun of a decrete of removing and ejectioun.

ANE decrete of removing is ſufficientlie ſatisfyit, quhen the partie decernit to remove, findis ſufficient cautioun to remove, and to deſiſt and ceis fra occupatioun of the landis, conform to the decrete; bot ane decrete of ejectioun can never be ſatisfyit and obeyit, untill the perſoun quha is violentle ejectit be reallie and with effect reſtorit to the landis or poſſeſſioun fra the quhilk he was ejectit: And albeit cautioun be offerit to that effect, the partie may not be compellit to reſſave the ſamin, nor zit is the offering thairof ane ſufficient fulfilling of the decrete. 9 *Jan.* 1576, Alexander Murray *contra N.* Reidheuch.

C. XXXVI. Anent executioun of ane decrete gevin aganis the ſubtenent alanerlie.

ANE decrete of removing, gevin aganis the ſub-tenent allanerlie, aucht and ſould have executioun aganis him, notwithſtanding that the principal tenent, beand in poſſeſſioun, alledgis that he was not ſummoundit nor callit to heir and ſé the ſamin gevin, and thairfoir the ſamin ſould not prejudge him and his tenent; becauſe the exceptioun of ane ſentence gevin betwix twa parties, and ſtandand unreducit, ſould not be ſtoppit or delayit be ony perſoun compeirand efter the geving thairof, for his interes in the cauſe. 19 *Junij*, 1542, Bartholomew Wallace *contra* Robert Guthrie, 2 *t. c.* 166.

C. XXXVII. Suſpenſioun of ane decrete gevin aganis the occupyaris of landis with the ſtok and teind.

GIF ony perſoun obtene ane decrete of ſpuilzie, or wrangous intromiſſioun of teindis aganis ony tenentis quha occupyis the landis, with the teind of the ſamin, payand thairfoir to thair maſter ane certane ſowme, or dewtie, for the ſtok and the teind, the ſamin ſould be ſuſpendit, and have na executioun, untill it be ſufficientlie liquidat how mekle the ſaid tenentis pay for thair teindis; the quhilk liquidatioun ſould not be referrit to the aith of the partie obtenar of the decrete, bot ſould be preivin be honeſt and famous witneſſis, 11 *Jan.* 1576, *Parochineris of* Kirktoun *contra Countes of* Craufurd, 2 *t. c.* 383.

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C. XXXVIII. Decrete of removing ſould have na executioun aganis him that is not warnit.

DECRETE of removing beand obtenit aganis ane, decernand him to flit and remove fra ony landis, ſould not have executioun aganis ane uther perſoun, quha, befoir the warning maid to him aganis quhom the ſaid decrete was obtenit, was in poſſeſſioun of the ſaidis landis, and not warnit to remove thairfra; the quhilk alledgeance or defence is ſufficient to him aganis the executioun of the ſaid decrete, except he, beand admittit for his interes in the principal cauſe, befoir the geving of the decrete, and compeirand perſonallie, or be his Procuratour, omittit to propone the ſaid exceptioun; becauſe he, in the firſt inſtance, befoir the geving of the decrete, pretermittand the ſaid alledgeance, ſall not be heard eftir the geving of the ſaid decrete, to uſe or alledge the famin aganis the executioun thairof. 17 *Junij*, 1566, James Hamiltoun *contra Abbot of* Kelſo, 1 *t. c.* 846.

C. XXXIX. Anent him quha ſucceidis in the vice of ane uther quha is alreadie decernit to remove.

DECRETE of removing beand obtenit aganis ony perſoun, quha, for obeying of the famin, flittis and removis fra the landis, and thairefter ſum uther perſounis intrudis thameſelfis in the poſſeſſioun of the landis, he in quhais favouris the ſaid decrete is obtenit, aucht and ſould have letteris of the Lordis aganis the intrudaris, charging thame as ſuccedand in the vice of the perſoun aganis quhom the decrete was gevin, to deſiſt and ceis fra all farder occupatioun of the ſaidis landis, or ellis to compeir and ſchaw ane reſonabill cauſe quhy thay ſould not do the famin. And gif thay refuis and failzie ſo to do, the Lordis, without ony farder proceſs, ſould direct letteris *ſimpliciter* aganis thame, as ſuccedand in the vice of the ſaid perſoun, to deſiſt and ceis fra the ſaid landis in time cuming. 13 *Junij*, 1532, Robert Logane *of* Coitfeild *contra* William Carmichael, 1 *t. c.* 998.

Item, Decrete beand obtenit at the inſtance of ony man, aganis the occupyaris of ony landis, decernand thame, and everie ane of thame, to flit and remove thairfra in time cuming, thameſelfis, thair wives, ſervandis, and gudis, fra the ſaidis landis, and leive the famin void and red; and the partie aganis quhom the decrete is obtenit chargit be letteris conform thairto, flittis and removis himſelf fra the ſaidis landis, and thairefter ony perſoun intrudis himſelf in the famin, the obtenar of the ſaid decrete may rais uther letteris warnand him, as ſuccedand in the place and vice of him quha is removit, to compeir, and to heir and ſe uther letteris gevin in all the four formis, charging him to deſiſt and ceis thairfra, or ellis to compeir and ſchaw ane reſonabill cauſe quhy he ſould not do the famin; gif he in like maner deſiſtis and ceiſſis thairfra, and in the mene time ane uther intrudis himſelf in the ſaidis landis, the perſoun obtenar of the ſaid decrete may mene him to the Lordis of counſal thairanent, and declare how he is continuallie fruſtrat of the executioun of the firſt decrete, be intruſioun of divers and ſindrie vicious perſounis and poſſeſſouris, ilk ane efter utheris; and thairfoir the Lordis ſall give him letteris, to charge him quha laſt intrudit himſelf, and zit remanis in poſſeſſioun, and all uther perſounis that ſall happin to intrude thameſelfis in the ſeirſaidis landis, to flit and remove thairfra in time cuming, or ellis to compeir at ane certane day, and alledge ane reſonabill cauſe quhy thay ſould not do the famin:

min. 23 *Feb.* 1558, *Biſchop of* Sanctandrois *contra* Robert Fiſchar *and utheris*, 1 *t. c.* 764.

Anent poinding.

C. I. Na poind may be tane without licence.

IT is ſtatute and ordanit, that nane of our ſoverane Lordis liegis tak ony poind fra ony perſoun, without the Kings Officiar, or Officiar of the ground quhair the poind is takin: And gif ony dois in the contrare, and thairby troublis ony man's landis in carying or taking away ony gudis thairfra, he may be thairfoir indytit in the juſtice air, as for reif, and nevertheles ſall mak ſatisfactioun to the partie of the damnage and ſkaith ſuſtenit be him throw taking of the ſaid poind: Bot nevertheleſs it is leaſum to the Lord of the ground to poind for his awin proper debt, or his maillis and dewties, within his awin ground, without ony of the Kings Officiaris. *Ro.* III. *c.* 13. *Leg. Foreſt. c.* 80. *Leg. Burg.*

Item, Gif the debtour, or ony in his behalf, be force and violence, cumis and takis away ane poind or diſtreſs fra the creditour, or ony uther on his behalf, the Lord of the ground may follow, with huy and cry, him quha tuke away the ſaid poind; and be heand apprehendit and attachit, the poind ſall be reſtorit incontinent to the creditour, and the away-taker ſall be demanit as ane manifeſt and commoun reivar; the quhilk to do pertenis to the Lord of the ground. *De maritag. c.* 17. *De judic. c.* 57.

Item, Gif ony man dwelland in ane ſchiref dome takis a poind out of the uther ſchiref dome, without licence of the King, and of his Officiar, and in his returning hame declaris to honeſt men that ſall happin to meit him be the way, that he tuke that poind in ſic ane place, and for ſic ane cauſe, the ſamin declaratioun ſould ſaif him fra all danger of his life and memberis; bot becauſe he tuke wrangouſlie the ſaid poind, without licence of the King and his Officiar, as ſaid is, he ſall pay to the King viij. ky, and mak reſtitutioun of the gudis poindit be him, and thairefter ſall clame and ſeik his ſaid debt, for the quhilk he tuke the ſaid poind, be ordour of law: And quha ſa failzies to mak the ſaid declaratioun, and is convict to have failzeit thairin, and is apprehendit be the awner of the poind, or be ony in his name, ſall be demanit as ane declarit and provin theif. *Aſſiſ. Reg. David. c.* 5. *Ex lib. Galbraith, fol.* 154. *lib.* 4. *c.* 30.

C. II. Of the maner of poinding.

IT is ſtatute, gif ony perſoun dwelland in ane ſchiref dome will tak ane poind within the ſamin, he ſall firſt cum to the Schiref, or his depute, and ask leive fra him to do the ſamin; and then the Schiref, or his depute, or Officiar, ſall paſs with him to the debtour's houſe; and gif the debtour grantis the debt, the Schiref, depute, or Officiar, ſall cauſe ane ſufficient poind to be deliverit to the creditour thairfoir, except the debtour alledge that he has alreadie payit the ſaid debt: And gif the debtour denyis the debt, in this cais it is leaſum to the creditour to ſweir in the debtour's preſence, that the ſamin is auchtand to him; the quhilk gif he dois, the poind ſall be deliverit to him, and he ſall hald and keip the ſamin be

the

the ſpace of thré dayis within the ſchiresdome; the quhilk gif he failzies to do, he ſall pay ane unlaw of viij. ky to the King. *Galbraith.* Thairefter it ſall be lattin to him, to bough, and the Schiref, his depute, or Officiar, ſall aſſign ane day to do juſtice within the ſamin ſchirefdome to the partie complenand: The quhilk thré dayis being bypaſt, na perſoun compeiand thairefter may repledge the ſaidis poindis, bot the ſamin ſall be deliverit to the partie complenand: Bot gif the creditour will not ſweir that the ſaid debt is auchtand to him, ane day ſall be aſſignit to the debtour, quha ſall preive that he maid payment thairof y at the quhilk day, gif he preivis not ſufficient payment, he ſall pay the ſamin to the creditour, togidder with ane unlaw of viij. ky to the King. *Lib.* 4. *c.* 30.

C. III. The maner how ane ſould ſchaw and manifeſt the poindis tane be him.

Gif ony perſoun ſendis his men in ony man's landis or boundis, to tak certane cattell, or movabill gudis, as ane poind, thay quha tak the poindis ſould, at the marchis, and furth-paſſing of the land quhairin the poind is takin, declare and mak manifeſt the ſaidis gudis, befoir ſufficient witneſſis, and alſwa to all perſounis meitand thame be the way: And gif the awnes of the ſaidis poindit gudis dois challenge thame, and alledge that thay have poindit ma cattel and gudis than thay ſould have done, thay ſall paſs quyte, and be aſſoilzeit fra his petitioun, thay preivand that thay maid manifeſt the ſaidis gudis in maner abone expremit: Bot gif thay failzie in preiving thairof, and ſwa contravenis the ſaid ordinance tuiching the manifeſtatioun of poindis, thay ar haldin of the law to mak anſwer to the perſewar of that quhilk he clamis fra thame. *Lib.* 4. *c.* 31.

C. IV. Quha may be poindit, and of the quantitie of the poind takin.

It is ſtatute and ordanit that na man in time cuming tak ony poind within ony man's landis and heritage, for debt auchtand to him, without licence askit and obtenit fra the Lord of the ground, or his Baillie. *Item,* All poindis takin for debt ſould be aggreabill to the ſowme and quantitie of the debt, and on na wayis ſould exceid the ſamin. *Item,* It is not leaſum to ony man to tak ane poind or diſtreſs, for ſervice or dewtie aucht to him of his landis or tenementis, haldin of him, outwith the boundis of the ſaidis landis: And alſwa, he may not tak ony poind for debt or dewties auchtand to him, bot equivalent, and not abone the valour and quantitie of the debt and dewtie. *Item,* Na perſoun may be poindit for debt, bot the principal debtour, or his borgh; and quha ſa beis convict in the premiſſis, ſall be puniſt be the King as ane brekar of his ſtatute and ordinance. *Stat.* 1. *Ro. Bruce, c.* 6. *Stat.* 2. *Ro. Bruce, c.* 8.

C. V. Of ane that alledgis him to be poindit injuſtiie.

It is not leaſum to poind ony man bot for provin and confeſſit debt, *Lib.* 4. *c.* 30. And gif ony man findis borgh to the Schiref, alledgeand that ane uther man has poindit him wrangouſlie, and aganis the law, and planelie denyis the debt, the Schiref, or his Judge, ſall cauſe his poind be reſtorit agane to him in this maner, *viz.* the partie complenand, to quhom the poind is re-deliverit, ſall find ane borgh to enter the poind at the nixt court, and to perſew him that poindit wrangouſlie, and he that tuke the poind ſall be attachit with ane borgh, to anſwer to the complaint and ſute of

the complenar; and the poind ſall be in the ſeizing and poſſeſſioun of the partie complenand, untill it be diſcuſſit be the Judge quhidder he be lauchfullie poindit or not. *Quon. attach. c. 5. Mod. ten. cur. c. 14.*

C. VI. THE poor tenentis ſall pay na farder than thair termis maill for thair Lord's debt, be the breve of diſtreſs. *Ja.* III. *fol.* 54. *act.* 44. 12 *Jan.* 1468.

C. VII. The fee of Schireffis and Officiaris that poindis. ANE decrete beand gevin, with letteris conform thairto, the Officiar, executour of the letteris, may poind and diſtreinzie the debtour's gudis, at his awin hand, for his fee, als weill as he micht poind and diſtreinzie the ſamin, efter the form and tenour of the letteris, for the principal ſowme or debt contenit in the decrete. 28 *Maij*, 1543, 1 *t. c.* 1079.

Ja. IV. *fol.* 104. 11 *Mart.* 1503.

C. VIII. Anent poinding of tenentis maillis and fermis. ANE decrete beand obtenit aganis ony man, the fermis, beand in his tenentis handis, and auchtand to him, may be poindit and diſtreinzeit, for executioun of the ſaid decrete, albeit he, aganis quhom the ſamin is gevin, has gudis and geir ſufficient and ſtreinzieabill thairfoir. 8 *Feb.* 1569, *Laird of* Anſtruther *contra* Elias Spens, 2 *t. c.* 337.

C. IX. The Lord may poind his tenent for thré termis maill. THE Lord proprietar, and heritabill fewar of ony landis, may poind and diſtreinzie his tenentis, occupyaris thairof, thair gudis and geir, be ane precept direct to ane Officiar to that effect, for the laſt thré termis maillis bypaſt auchtand to him of the ſaidis landis. 13 *Decemb.* 1537, William Wauchop *contra* Gavine Borthwik, 1 *t. c.* 491.

C. X. How and quhairfoir the Lord may poind his tenent. THE Lord of the ground may, be his Officiar, creatit in his awin court, poind and diſtreinzie his tenent, for the dewtie of his landis, and for the by-runis, the ſamin beand liquidat; utherwayis he may call his tenent befoir his awin Baillie, to heir and ſé the ſamin fermis and dewties liquidat, 24 *Julij*, 1541, 2 *t. c.* 163. Na man may poind his tenent for the arriage and by-run maillis, bot for thré termis allanerlie, immediatlie preceding the time of the poinding, except he have the decrete and authoritie of ane Judge thairto. 12 *Feb.* 1560, Johne Creichtoun *of* Strathurd *contra N.* 18 *Mart.* 1562, *Laird of* Drumquhaſſil *contra Ladie* Polmais, 1 *t. c.* 1244.

C. XI. Office of ane Judge in actioun of doubill poinding. IN actioun or cauſe of doubill poinding, intentit be ony tenent, the Judge aucht and ſould conſider allanerlie quhilk of thame that poindis the tenent is in real poſſeſſioun, be reſſoun of ane titill, and ſould not inquire quhilk of thair titillis is beſt, nor zit ſould reſſoun upon the ground richt or propertie of the landis; becauſe, albeit baith the parties have ane titill, the tenent ſould obey him quha is in poſſeſſioun be virtue of ane titill ſtandand unreducit. 27 *Junij*, 1542, *Tenentis of* Libertoun *contra* William Snype *and Lord* Somerville, 2 *t. c.* 113.

C. XII. Of him quha in time of ANE Officiar poindand gudis and geir, be virtue of our ſoverane Lord's

Lord's letteris, ſould in the mene time ſpeir and inquire opinlie gif ony perſoun will alledge that the ſaid gudis pertenis to him as his proper gudis: And gif ony perſoun compeiris in the ſaid inſtant time of the poinding, and alledgis, and is reddie to mak faith to the Officiar that the ſamin is his awin gudis and geir, the Officiar ſould deliver the ſamin agane to him; utherwayis, gif he procedis in poinding thairof, the awner of the ſamin has actioun of ſpuilzie aganis him, and alſwa aganis the intromettouris thairwith. 19 *Mart.* 1549, 1 *t. c.* 687.

poinding compeiris and makis faith to the Officiar.

GIF ony Officiar, havand precept, letteris or command to poind or diſtreinzie ony man's gudis or geir, apprehendis the ſamin upon the outmoſt part and march of the ſchirefdome or juriſdictioun, within the quhilk it is leaſum to him to poind; and in the mene time the awner thairof, for fruſtrating and ſtopping of the poinding, callis and drives the ſaidis gudis furth of the ſaid ſchirefdome and juriſdictioun, into the boundis of the nixt juriſdictioun lyand adjacent and contigue thairto, it is leaſum to the Officiar, or ony uther perſoun aſſiſtand him in the executioun of his office, incontinent thairefter to follow, apprehend and poind the ſaid gudis, like as thay had not been driven nor callit away. 22 *Mart.* 1560, George Home *contra* John Scheill, 1 *t. c.* 1247.

C. XIII. Of gudis apprehendit in the outmoſt and fardeſt part of the juriſdictioun.

GIF ony man aſſiſtis or helpis ane Officiar in the executioun of his office, in poinding ony man's gudis and geir, be virtue of his precept, or letteris paſt upon ane decrete to that effect, he may not be callit for ſpuilzie or wrangous intromiſſioun with the ſaidis gudis and geir. 22 *Mart.* 1560, George Anderſon *contra* John Scheill, 1 *t. c.* 1247.

C. XIV. It is leaſum to aſſiſt the Officiar in poinding.

IT is ſtatute and ordanit, that it ſall not be leaſum to the King's Majeſtie, nor nane of his liegis, in ony time cuming, to tak poſſeſſioun be compryſing or utherwayis, of ony landis, tenementis, or immovabill gudis, for ony debt auchtand to him, gif the debtour has ſufficient movabill gudis for payment of the ſaid debt, and is reddie and willing to mak payment thairof. *Leg. Foreſt. c.* 73.

C. XV. Movabill gudis ſould be firſt poindit.

LETTERIS of poinding allanerlie ſould be direct for executioun of ane contract maid betwix twa parties, contenand liquidat ſowmis, beand regiſtrat in the buikis of ony ordinar Judge, with proviſioun thairintill, that letteris paſs thairupon in form as effeiris: And gif ony letteris of horning be obtenit for fulfilling of the ſaid contract, the ſamin aucht and ſould be *ſimpliciter* ſuſpendit, in reſpect that the ſowmis ar not liquidat, as ſaid is, and that it is not providit in the contract that horning or poinding ſould paſs thairupon, 14 *Decemb.* 1570, James Dempſtar *contra* Robert Bruce, 1 *t. c.* 1366. And gif ony letteris of horning be grantit to the effect foirſaid, the ſamin aucht and ſould be ſuſpendit *ſimpliciter*, except the debtour, efter that he became debtour, maid aſſignatioun to ony uther perſoun of all his gudis, movabill and immovabill; for in this cais the ſaid letteris of four formis ſould have executioun aganis him, in reſpect that he has nathing pertening to him poindabill nor ſtreinzieabill

C. XVI. Poinding, and not horning, ſould paſs upon liquidat ſowmis.

bill for the ſaid debt. 17 *Decemb.* 1554, *M.* George Hay *contra* Johne Cranſtoun. 9 *Mart.* 1555, 1 *t. c.* 740.

C. XVII. Poinding for annuellis.

ANE annuelrentar may poind for the annuel auchtand to him, ony part of the landis ſubject and bund for payment of the ſamin annuel: And gif thair be divers annuelleris ane upon ane tenement, thay may all poind and diſtreinzie ony ane part thairof for thair annuellis. 7 *Mart.* 1543, 2 *t. c.* 158.

C. XVIII. Anent poinding of ony thing belanging to the pleuch in time of tilage.

ALSWA, gif ony perſoun poind, or diſtreinzie, or compriſe horſe, oxin, or uther gudis pertening to the pleuch, or labouring of the ground, in time and ſeaſon of zeir for labouring of the ſamin, albeit the ſamin be not actuallie in the pleuch, uther gudis ſtreinzieabill beand at that time upon the ground, and within the ſamin juriſdictioun, pertening to him that is poindit, he quha poindis the ſaidis gudis may be callit for ſpuilzie thairof, 16 *Mart.* 1545. *Vide in lib. impreſſo de novo. Ja.* IV. *fol.* 109, 134. 11 *Mart.* 1505. Becauſe drawing oxin, or uther gudis abone ſpecifyit, may not be poindit be virtue of ony decreit; or utherwayis, gif the awner thairof be reſponſal for the ſowme contenit in the ſaid decrete, ather in immovabill gudis, ſic as landis pertening to him in liferent, or heritage; or in movabill gudis, ſic as corn, ſcheip, wild meiris, riding horſe, ky, inſicht pleniſhing, or victuallis. 23 *Jan.* 1507, John Forbes *of* Collies *contra* John Forbes *of* Powſting. *Ult. Julij*, 1557, James Bartilmo *contra* John Sinclair, 1 *t. c.* 1090. *Item*, The wordis of the act of parliament foirſaid, maid be King *James* the ſeird, concerning the poinding of drawing oxin, and uther beiſtis that labouris the ground, ſould be underſtuid and referrit to the ſeaſoun and time of the labouring, althocht the ſaidis gudis or beiſtis be not actuallie zokkit, or not in pleuch, wane or harrowis, 12 *Feb.* 1560, John Creichtoun *contra* Walter *and* John Fentounis, 1 *t. c.* 1242. Bot it is to wit, that ane horſe paſſand fra ony man's place to his coilheuch, to carry and fetch hame coillis, may be poindit and compriſit for debt, or for ony decrete obtenit aganis him befoir ane Judge. 24 *Jan.* 1558, Johne Turnour *contra* Hector Blacader, 1 *t. c.* 1221.

C. XIX. Of the profit of gudis poindit, and thairefter reſtorit to the awner.

GIF ony man poindis ane horſe, or ony uther gudis and geir pertening to ane uther, and efter the poinding thairof he rydis and labouris with him, gif it happinis that the ſamin horſe ſould be reſtorit to him fra quhom he was poindit, he that poindit him ſall not onlie reſtoir the horſe, or uther gudis, bot alſwa ſould pay to the awner thairof ſa mekle as he may preive that the ſaidis horſe or gudis was ſkaithit betwix the time of his poinding and delivering agane. 23 *Julij*, 1580, Robert Charteris *contra* John Maxwell, 1 *t. c.* 26.

C. XX. Of the poinding of a bucket, or wand of ane ſalt-pan.

NA man may poind or diſtreinzie ane bucket or wand of ane ſalt-pan, for ony kain ſalt or uther dewtie auchtand to him be the awner thairof, gif thair be uther gudis and geir, ſic as ſalt, or inſicht gudis pertening to him ſtreinzieabill for the ſaid debt. 12 *Jan.* 1555. 13 *Jan.* 1555, David Sibbet *contra Lord* Sinclare, 1 *t. c.* 1200.

C. XXI. Anent poind-

ANE decrete of ane Judge obtenit aganis ony perſoun, decern-

and

and him to content and pay to him certane ſowmis of money, the obtenar of the ſamin aucht and ſould on na wayis poind and diſtreinzie ony gudis or geir pertening to the tenentis of him aganis quhom the decrete is obtenit, as thair proper gudis, be reſſoun of ſteilbow, for termis zit to rin. 26 *Jan.* 1487, Matthow Cant *and utheris*, contra *Sir* William Ruthven *of that ilk, and utheris*, 1 *t. c.* 54. ing of ſteilbow gudis.

THAT poinding on *Martinmas* and *Whitſonday* be delayit to the feird day thairefter, *Ja.* III. *fol.* 53. *act.* 42. 20 *Novemb.* 1469. C. XXII.

DECRETE beand obtenit, with letteris direct to Officiaris of armis, to poind and diſtreinzie thairfoir, gif he quha is to be poindit, befoir the raiſing of the ſaid letteris, or at leiſt befoir the executioun thairof, has payit reallie, and with effect, all ſowmis of money and debtis contenit in the ſaid decrete, he may lauchfullie ſtop the Officiar in poinding of his gudis and geir, and retene the ſamin without perrel of law; and he doand the ſamin, dois na wrang thairintill, nather may be callit or convict for ony deforcement thairfoir. 10 *Decemb.* 1561, John Watſoun *contra* Alexander Ramſay, 1 *t. c.* 796. C. XXIII. He that has maid payment of the debt may not be poindit.

DECRETE beand gevin aganis ony perſoun, with letteris to poind and diſtreinzie the gudis and geir pertening to him aganis quhom the decrete is gevin, quhairever the ſamin may be apprehendit, gif the obtenar of the ſaid decrete poindis ony gudis or geir in ony uther man's poſſeſſioun, pertening to his debtour, he may not efterwart be callit for ſpuilzie thairof, be ony perſoun, gif he preivis ſufficientlie that the ſaid gudis and geir pertenit to his debtour, and the profitis thairof come to his behove and uſe, albeit the ſamin, the time of the poinding, wer in ane uther man's poſſeſſioun; the quhilk ſould be admittit to the defendar's pruif, *in favorem rei judicatæ*. 13 *Decemb.* 1561, Thomas Ure *contra* James *and* William Glenis, 1 *t. c.* 787. C. XXIV. The debtour's gudis may be poindit, quhairever thay may be apprehendit.

Anent compriſing.

THE denunciatioun and warning of landis to be compriſit, ſould be maid at the ground of the ſamin, and at the mercat-cros of the principal burgh of the ſchirefdome or ſchirefdomis quhair the landis lyis, 19 *Junij*, 1561, *Laird of* Blanerne *contra Laird of* Reſtalrig. Bot gif the landis lyis within ony regalitie, the denunciatioun thairof aucht and ſould be maid at the ground of the ſaidis landis, and alſwa at the principal and heid town of the ſaid regalitie; utherwayis, gif the landis lyand within the regalitie be denuncit at the market-cros of the heid burgh of the ſaid ſchirefdome, the denunciatioun, compriſing, and all that followis thairupon, is of nane avail, and may be reducit. *Pen. Feb.* 1562, *Lord* Seytoun *contra the Erle of* Menteith, 1 *t. c.* 790. C. I. Quhair, or be quhom, landis may be compriſit or denuncit.

Item, All compriſing of landis aucht and ſould be maid at the heid burgh of the ſchire, quhair the landis lyis, or ellis upon the

ground of the ſamin landis, utherwayis the ſamin is of nane avail, and may be reducit. 12 *Mart.* 1510, Adam *Erle* Bothwell *contra the Laird of* Dalzell, 1 *t. c.* 163.

Item, Compriſing of landis ſould be led and deducit be ane Officiar of armis, upon the ground of the ſamin, or, at the leiſt, within the principal town of the regalitie, or of the ſchiref-dome, gif the landis lyis not within the regalitie, bot within the ſchiref-dome; except the Lordis of counſal ſpeciallie diſpenſe thairanent, and ordane the ſamin to be compriſit in ane uther place, without the juriſdictioun thairof; utherwayis, the proceſs of appriſing, with all that followis thairupon, may be reducit. 9 *Junij*, 1561, *Laird of* Blanerne *contra Laird of* Reſtalrig. *Pen. Feb.* 1562, *Lord* Seytoun *contra Erle of* Menteith, 1 *t. c.* 791.

C. II. The movabill gudis ſould be firſt ſerchit, and compriſing ſould be maid conform to the juſt avail of the landis.

COMPRISING of landis, or uther immovabill gudis, pertening to ony man, led and deducit aganis him be reſſoun of debt auchtand be him, or of ony decrete obtenit aganis him, is of nane avail, and aucht and ſould be reducit, gif his movabill gudis wer nocht firſt ſocht, ſerchit, and diſcuſſit, 4 *Julij*, 1533, James Crawmond *of* Auldbar *contra Laird of* Carmylie. Becauſe the movabill gudis pertening to the debtour ſould be firſt ſerchit and ſocht be the law of this realme, 11 *Decemb.* 1533, Niniane Seytoun *of* Tullibodie *contra the King*. *Item*, Gif the landis be compriſit within the half of the juſt avail, the proceſs of compriſing is of nane avail, and may be reducit. 4 *Julij*, 1533, James Hering *contra* Henrie Lovell, 1 *t. c.* 433.

C. III. Valour of landis to be obſervit in compriſing.

IN compriſingis, of the law of this realme, ilk twentie ſchilling land of auld extent ſould be compriſit to twentie markis, 4 *Julij*, 1533. And ilk mark land of zeirlie profit ſould be compriſit to the creditour to twentie merkis, *viz.* five merkis of zeirlie profit for ilk hundreth merkis of debt. *Pen. Jan.* 1559, Alane Dicheſone *contra* Johne Carkettill. *Pen. Mart.* 1536, 1 *t. c.* 932.

C. IV. Quhat landis may not be compriſit.

DECRETE beand obtenit aganis ony partie, the landis quhilk wer wodſet and annalzeit heritabillie be his predeceſſour, or himſelf, or zit gevin be ather of thame in liferent, befoir the geving of the ſaid decrete, na inhibitioun maid in the contrare, may not be poindit, diſtreinzeit nor compriſit be virtue of the ſaid decrete. 9 *Junij*, 1561, *Laird of* Blanerne *contra Laird of* Reſtalrig, 1 *t. c.* 788.

C. V. Of conjunct-fie landis compriſit efter the huſband's deceis.

LANDIS pertening in conjunct-fie to ony woman, and ſche in poſſeſſioun thairof, efter the deceis of hir husband, hir conjunct-fie of the ſamin may on na wayis be compriſit for ony cauſe or debt auchtand be the proprietar or ain; and the perſounis of inqueiſt doing in the contrare, committis manifeſt and wilful errour, gif the time of the compriſing the conjunct infeftment be ſchawin and producit befoir thame. 29 *Mart.* 1531, *The King and* Jonet Makgachane *contra* Alexander Kennedie *of* Bargenie, 1 *t. c.* 332. 7 *Julij*, 1543, 1 *t. c.* 1076.

C. VI. Of conjunct-fie landis

ANE decrete and ſentence of ane Judge beand obtenit aganis ony

ny man for debt, quha has ane lauchful wife, and ony landis and tenementis, gif the landis or tenementis pertenis to his wife in conjunct-fie, the ſamin may not be compriſit for the debt recoverit aganis him: Bot gif the landis or tenement pertenis to the wife be reſſoun of conjunct-infeftment, the maillis and dewties thairof aucht and ſould be tane up and payit to the creditour during all the dayis of the lifetime of hir husband allanerlie. 25 *Octob.* 1488, Robert Lamy *contra* Johne Dolas, 1 *t.* c. 57. compriſit befoir the husband's deceis.

GIF the father puttis the ſone in fie of his landis, and thairefter, for ony debt auchtand be the ſone, the ſaidis landis be compriſit at the inſtance of ony creditour, the father, albeit he be frank-tenementar of the ſaidis landis, ſall not be heard or admittit to call or perſew for reductioun of the ſaid compriſing, gif he was preſent at the time of the making of the ſaid compriſing, and knew and underſtuid the ſaidis landis to be apprifit for his ſone's debt, and maid na impediment nor contradictioun thairintill; *ſed omnino tacuit de jure ſuo, quia propterea de jure tacitè renunciavit eidem.* 23 *Mart.* 1531, *The King and* John Craufurd *contra the Meſſinger, Schiref in that part, the perſounis of inqueiſt, and* John Craufurd, 1 *t.* c. 309. C. VII. Of landis pertening to the father in liferent, and to the ſone in fie.

OBLIGATIOUNIS of debt auchtand to ony man, or gift of mariage of ony air, or of ward and non-entres of ony landis pertenand or diſponit to him, may be compriſit fra him. 3 *Julij*, 1555, Andro Lundie *in* Balgonie *contra Ladie* Seytoun, 1 *t.* c. 1119. C. VIII. Obligatiounis may be compriſit.

MAILLIS, fermis, or dewties of ony landis, or uther gudis appointit for the dailie ſuſtentatioun of the air of the ſaidis landis, may not be compriſit for ony debt auchtand be his predeceſſour to ony man. 10 *Julij*, 1553, 1 *t.* c. 1151. C. IX. A man's dayelie ſuſtentatioun may not be compriſit.

LANDIS beand compriſit be ony man, and beand aſſignit be him to ony uther for the ſowmis for the quhilk thay ar compriſit, the aſſignay, be virtue of his aſſignatioun, aucht and ſould be infeft in the ſamin be the immediat ſuperiour thairof. 20 *Junij*, 1542, *Lord* Ogilvie *contra S.* Johne Campbell. 24 *Julij*, 1542, 2 *t.* c. 108. C. X. Of him that is maid aſſignay to ony man's landis compriſit.

GIF landis be compriſit and aſſignit to ony perſoun, and it happin him fra quhom thay ar compriſit, to be foirfaultit, befoir ſaiſine tane be him to quhom thay wer aſſignit, the ſamin landis cumis in the King's handis, be reſſoun of foirfaltour led and deducit aganis him fra quhom thay wer compriſit, notwithſtanding the ſaid aſſignatioun. 24 *Feb.* 1555, *Comptroller* contra *Lord* Sempill, 2 *t.* c. 259. C. XI. Compriſit landis may cum under foirfaltour.

COMPRISING for executioun of decretis ſould paſs upon the debtour's landis, his movabill gudis being firſt diſcuſſit. *Ja.* III. *fol.* 54. *act.* 44. 20 *Novemb.* 1469. *Ja.* V. *fol.* 138. *act.* 86. 14 *Martij*, 1540. C. XII.

COMPRISIT landis ſould be redemit within ſevin zeiris. *Ibid.* C. XIII.

Anent

Anent expensis of pley.

C. I. Expensis of pley.

INPRIMIS, for libelling, signeting, writing, executioun of the principal summoundis, quhairupon the decrete procedit. *Item*, For the actis of the process, and letteris of summounding thairupon, signeting, writing thairof, and warning of the partie. *Item*, For the witnessis summounding in divers partis, executiounis and indorsatiounis thairof. *Item*, For the expensis of all and sindrie the witnessis in cuming fra hame, remaning, and returning hame, for ilk persoun, according to his estait and qualitie. *Item*, For Procuratouris feis in persute and defence of the mater and actioun. *Item*, For the Maiseris feis, in the examinatioun of ilk ane of the said witnessis, and at renunciatioun of farder probatioun, and at the geving of the decrete. *Item*, For the Clerk's fie, for the examinatioun of the witnessis, writing of the decrete, and letteris thairupon. *Item*, For the partie's expensis all the time that he was present awaiting upon the calling of the actioun, and for the expensis of his men, horse, and boyis, effeirand to his estait. 28 *Julij*, 1552, *Priour of* Pluscardine *contra the Laird of* Grant, 1 *t. c.* 617.

C. II. EXPENSIS of pley to be taxt and insert in the decreitis. *Mar. R. ante fol.* 169. *pag.* 2. 14 *Decemb.* 1557.

C. III. EXPENSIS of the Lordis. *Ja.* II. *fol.* 40. *act.* 69. *in fine*, 6 *Mart.* 1457.

C. IV. The Lordis silver.

ITEM, The Lordis of counsal may mak and constitute ane Procuratour and Factour for thame to raise and uptak all unlawis of ony persoun that tynis thair causis befoir thame, and had not ane apparent richt for thame in thair actioun, the quhilk Factour sall have our soverane Lord's letteris direct to the Schireffis to poind and distreinzie for the saidis unlawis, and sall be responsal to the Lordis thairfoir, 23 *Octob.* 1488, *The Lordis, and M.* Richard Lauson *Justice-Clerk*, 1 *t. c.* 55. *Item*, Gif ony partie be convenit befoir ony Judge, in ony actioun or cause, and baith the parties happinis to enter in pley, the partie quha tynes the cause, and has na probabill nor apparent cause to pley, aucht to be condampnit in the expensis of the pley, to be payit to the uther partie, efter the discretioun of the Judge, 7 *Junij*, 1496, *Lord* Erskine *contra the burgh of* Aberdene. And gif the partie had probabill cause to persew or defend, albeit he tynis his pley, he sould be assoilzeit fra the expensis of the pley. 24 *Novemb.* 1520, 1 *t. c.* 108.

C. V. FOR expensis, *vide in lib. impress. acta sequentia, viz. Ja.* V. *fol.* 139. *act.* 91. 14 *Martij*, 1540. *Ja.* VI. *Parl.* xj. *act.* 43. 29 *Julij*, 1587. *Ja.* IV. *fol.* 92. *act.* 52. 18 *Maij*, 1491. *Ja.* VI. *fol.* 16. *act.* 25. 20 *Octob.* 1579. & *Parl.* xj. *c.* 87. 29 *Julij*, 1587. *Parl.* XII. *c.* 142. 5 *Junij*, 1592. *Item*, *Ja.* I. *fol.* 11. *act.* 72. 11 *Martij*, 1425. *Ja.* IV. *fol.* 104. *act.* 100, & 101. 11 *Martij*, 1503.

Anent

Anent reductioun of ſentence.

C. I. Divers kindis of reductioun of ſentence.

SENTENCE and decrete gevin be ane Judge, is of nane avail, force nor effect, gif it be gevin be him quha has na powar and juriſdictioun to give the ſamin.

Item, Gif the ſamin be gevin without ordour of law.

Item, Gif the Judge has gevin condemnatour aganis the Procuratour allanerlie, quhen he ſould have gevin the ſamin aganis the partie.

Item, Gif it be pronuncit in abſence of the partie, not beand callit nor warnit to compeir and heir the ſamin gevin; for all ſentences gevin aganis ony partie that is abſent, not beand contumax, is of nane avail.

Item, Gif the ſamin be gevin on ane haly day, albeit the ſamin be pronuncit with conſent of the parties.

Item, Gif it be gevin within feriat, and cloſe time of harveſt.

Item, Gif the libel or clame contenis ane certane quantitie, and the ſentence contenis not in like maner ane certane quantitie, *De except. c.* 15.

Item, Gif the Judge aſſignis ane certane term, within the quhilk he ſould pronunce and give ſentence, the ſamin, gif he ony gevis, befoir that term, is of nane avail.

Item, Gif he aſſignis a certane place thairto, and pronuncis in ane uther place.

Item, Gif the ſamin is gevin contrare to him that is deceiſt, or aganis him quha is furious, or in time of nicht, befoir the ſun riſing, and efter the ſetting thairof.

Item, Gif the ſamin be gevin aganis ane minor, without authoritie of his tutouris or curatouris.

Item, Gif the ſamin be gevin throw falſe witneſſing or probatioun, the ſamin ſould be declarit to be of nane avail, efter that the falſet is provin and declarit, *De except. c.* 15. *Ex lib. Sconen.*

Item, The ſentence is of nane avail, gif the ſamin be not pronuncit be ane Judge ſittand in his judicial ſait quhairin he uſis to give ſentence, *De except. c.* 5.

Item, It is ſtatute and ordanit, that na Juſtice, Schiref, nor Judge, ſall ſit or remane in court the time of the aviſing of interloquutouris, or ſentence, tuichand ony clame, or anſwer proponit in court; bot in the mene time he ſould paſs furth of court, and the fré tenentis or ſuitaris of court ſould aviſe thairanent in his abſence; and, thay beand aviſit thairwith, the Juſtice, Schiref, or uther Judge, ſould be callit in agane within court, and the ſentence or dome ſould be pronuncit in preſence of the Judge, conform to the aviſement and deliverance of the ſaid fré tenentis. *Quon. attach. c.* 51. *Aſſiſ. Reg. David. c.* 7.

C. II. Of thame quha ſould be ſummoundit in actioun of reductioun.

VIDE in lib. impreſſo. Ja. III. *fol.* 76. *act.* 124. 1 *Octob.* 1487. (Nota, *This act was onlie temporal, zit becauſe it is conform to the practique, it is noted here.*)

Item,

Item, Quhen ony decrete, or rolment of court, gevin be ane inferiour Judge, is reducit and retreitit be ane ſuperiour Judge, for ony reſſoun and cauſe alledgit befoir the ſuperiour *in ſecunda inſtantia*, quhilk was not proponit nor alledgit befoir the inferiour Judge *in prima inſtantia*, the inferiour Judge, gevar of the ſaid decrete, ſould not be puniſt in his bodie, gudis or geir, for geving of the ſamin. *Ult. Julij*, 1557, *Laird of* Pitcur *contra* Alexander Barclay, 1 *t. c.* 1211.

C. III. Expenſis of proceſs extracting for reductioun.

VIDE in lib. impreſſ. Ja. IV. *fol.* 104. *act.* 101. 11 *Martij*, 1503.

Gif ony perſoun intendand to call and perſew befoir the Lordis for reductioun of ony proceſs or ſentence gevin befoir ane inferiour Judge, deſireand the extract thairof, the ſamin ſould be extractit and gevin to him upon his expenſis; except the depoſitioun of witneſſis, quhilk ſould not be deliverit in temporal courtis, for inconvenientis that may follow thairupon; bot the ſamin ſould be producit befoir the Lordis, to the effect that thay may ſé and conſider gif the ſentence be conform thairto or not. 1 *Decemb.* 1535, 1 *t. c.* 1024.

C IV. Ane decrete ſtandand unreducit, ſould have executioun, and the dependance of the reductioun ſtoppis not the executioun.

ALL ſentences and decretis gevin be the Lordis of counſal, or ony inferiour Judge within this realme, aucht and ſould ſtand, and have executioun, ay and quhill thay be reducit, notwithſtanding that the ſamin be evil, and wrangouſlie done, *Pen. Octob.* 1532, 1 *t. c.* 620, 23 *Mart.* 1541, *M.* George Hay *contra the tenentis of N.* 2 *t. c.* 85. And ſiclike, albeit ane man intent ſummoundis for reductioun of ony decrete or ſentence gevin and pronuncit aganis him, the dependance of the ſaid ſummoundis, or cauſe of reductioun, ſould not ſtop or delay the executioun of the decrete. 20 *Junij*, 1542, *Lord* Ogilvie *contra* John Campbell, 2 *t. c.* 109.

C. V. He that is denuncit for not obeying of ane decrete, ſould obey befoir he be relaxit.

ANE decrete gevin aganis ony man, quha, for not obeying of the ſamin, is denuncit rebel, and put to the horn, and thairefter raiſis ſummoundis for reductioun thairof, he on na wayis ſould be relaxt fra the horn, nor zit permittit to perſew his ſummoundis of reductioun, until the time he obtemper, obey and fulfill the effect of the ſaid decrete. 28 *Aug.* 1527, *The Quenis Grace* contra *the Laird of* Duntreth, 1 *t. c.* 296.

C. VI. A decrete may be reducit in ane part, and ſtand unreducit in the reſt.

ALBEIT ane retour uſis to be reducit *in toto, non pro tanto, licet erratum ſit tantummodo in uno capite ſeparato ab aliis, et penitus diverſo*; zit nevertheleſs ane ſentence or decrete may be reducit in ane part, and ſtand unreducit in the reſt; as ane decrete of ejectioun or ſpuilzie gevin in favouris of ony perſoun may be reducit, ſa far as it ordanis him to be reſtorit to his poſſeſſioun, gif the ſamin beiris nor that he was in poſſeſſioun the time of the alledgit ſpoliatioun, or zit gif the ſamin was gevin, na lauchful poſſeſſioun beand libellit; and nevertheles the ſamin decrete may ſtand in the uther punctis, as tuichand the reſtitutioun of the gudis ſpuilzeit, and in all uther partis, quhilk ar relevantlie libellit, and lauchfullie provin. 7 *Mart.* 1541, *Ladie* Faſcaſtel *contra Ladie* Blanerne. 13 *Julij*, 1566, Johne Hamiltoun *contra the Laird of* Cambuſnethane, 2 *t. c.* 22.

ANE

C. VII. Albeit ane Judge be removit fra his office, he may be callit for reductioun of ane decrete.

ANE Proveſt or Baillie gevand ane decrete, may be callit for reductioun thairof, albeit he be out of the office of proveſtrie or bailliarie. 5 *Decemb.* 1561, *The Quene's Advocat and Theſaurare* contra Johne Udnie, *ſumtime Baillie of* Brechin, 1 *t. c.* 1268.

C. VIII. Exceptioun of nullitie, ſtoppis not execution.

ANE ſentence gevin *à non ſuo judice*, is null in the ſelf, and zit the nullitie or exceptioun *notoriæ nullitatis* ſould not ſtop the execution of the ſaid ſentence; becauſe the ſamin ſentence may not be declarit null be way of exceptioun, bot be ordinar way of actioun. 15 *Junij*, 1542, *N.* contra *M.* Thomas Hutcheſon, 1 *t. c.* 1296.

C. IX. Of the incompetencie of ane Judge.

THE proceſs, decrete, and rolment of court, with all that followis thairupon, led, deducit, and gevin be ony Judge, is of nane avail, force nor effect, and may be reducit, gif the partie defendar, or ane ſufficient Procuratour in his name, alledgis the Judge not to be competent, and thairfoir proponis befoir him, in lauchful time and place, *exceptionem litis dependentis* of the ſamin cauſe befoir ane uther Judge quhilk is competent thairintill, and verifies and appreivis the ſamin, as effeiris. *Item*, Gif the ſaid Judge, competent in the cauſe, ſend a ſufficient Actornay and Procuratour, and he, conform to the powar and mandat, compeir in plane court, and deſire the ſamin cauſe to be repledgit to his maſter's court, as Judge competent thairintill, offerand to that effect cautioun of collerauch, conform to the lawis of this realme: And gif the ſaid Judge, notwithſtanding the ſaid alledgeance, procedis and gevis out ſentence, the ſamin is of nane avail, as ſaid is, *tanquam lata à non ſuo judice.* 5 *Julij*, 1518, David Garden *contra the Schiref of* Forfar. 3 *April.* 1563, *Burgh of* Carrail *contra Schiref of* Fife, 1 *t. c.* 387.

C. X. Of the admiſſioun, creatioun, and aith of the Judge.

SENTENCE gevin be ane Judge delegat, or Schiref in that part, is of nane avail, and ſould be reducit, gif the partie, efter the fenſing of the court, deſiris the ſaid Judge to ſchaw his commiſſioun and powar of deputrie, quhairby he was conſtitute Judge in the cauſe, and deſire him, and the memberis of court, to ſchaw quhair thay wer creatit, ſworn and admittit thairto, and neverthelefs the Judge refuſis to do the ſamin; becauſe of the law of this realme, all Judgeis, quhilk ar not in uſe of halding of courtis as ordinar, or general deputis, bot allanerlie in certane actiounis and cauſis ſpecialie depute thairto, aucht and ſould ſchaw thair commiſſioun, creatioun and admiſſioun, thay beand lauchfullie requirit thairto, 17 *Mart.* 1541, *Ladie* Faſcaſtel *contra* Pa. Lumiſden *of* Blanerne, 1 *t. c.* 539. Gif it be proponit and objectit be the defendar, and comptit and reknit in judgment, befoir ane inferiour Judge, that the perſewar is ſib and neir of conſanguinitie or affinitie, within the feird degré *inclusivè*, and the Judge, notwithſtanding the ſamin, procede fordwart in the cauſe, the proceſs, ſentence, and all that followis thairupon, is of nane avail, and may be reducit. 4 *Decemb.* 1533, 1 *t. c.* 949.

C. XI. Of the fenſing and memberis of court.

SENTENCE and rollment of court is of nane avail, and ſould be reducit, gif he aganis quhom it is gevin deſire in judgment the fenſing of the court to be read to him, that he may knaw quha is Judge and memberis of court, that he may object aganis the ſamin, and the Judge and his deputis refuſis to do the ſamin. *Item*, Gif he

he alledgis that the Judge is ſuſpect, becauſe he is tenent and takiſman to the perſewar, or commounlie haldin his dailie and domeſtique ſervand, or reſſavis ſic profit or gude deid of him; quhilk beand referrit to the Judge's aith, he refuſis to mak faith thairanent. 10 *Julij*, 1540, James Hering *contra Schiref of* Perth, 1 *t. c.* 511.

C. XII. Of ane Judge that is diſchargit of his office.

SENTENCE or rolment of court, gevin be ony inferiour Judge within this realme, is null, and may be reducit, gif the Judge procedis to the geving thairof, he beand of befoir chargit be our ſoverane Lord's letteris, in judgment, to continue the cauſe and matter to ane certane day; or zit gif he be diſchargit of his office in that part of all proceding in the cauſe, 11 *Julij*, 1545, Marion Ogilvie *contra Schiref of* Forfar *and Lord* Glamis, 1 *t. c.* 609. *Item*, Gif ony inferiour Judge be chargit be letteris direct be deliverance of the Lordis, to continue the geving of the decrete, and to procede na farder in the cauſe, and zit nevertheleſs procedis to the geving thairof, the ſamin, with all that followis thairupon, is of nane avail, and may be reducit. 10 *Mart.* 1560, *Laird of* Roſſie *contra Schiref of* Perth, *and the Laird of* Pitcur, 1 *t. c.* 1245.

C. XIII. Of ane partial Judge.

ALL proceſſis and ſentences gevin be quhatſumever Judge or Jugeis, ar of nane avail, gif the Judge takis or admittis the partie's Advocat or Procuratour, in quhais favouris the ſentence is pronuncit, to ſit with him as aſſeſſour, and to give him counſal in the ſamin mater. *Item*, Gif the Judge ſayis planelie in judgment, that he will admit na exceptioun, proponit, or to be proponit, be the defendar. 19 *Decemb.* 1505, *The King, and* George *Maſter of* Angus *contra the Schiref of* Bervick, 1 *t. c.* 225.

C. XIV. Reductioun be reſſoun of titill and ſummoundis.

ALL proceſſis and ſentences, led and gevin aganis ony perſoun, ar of nane avail, and may be reducit as gevin for null defence, gif he aganis quhom the ſamin was pronuncit was not lauchfullie ſummoundit thairto, nather perſonallie, nor at his dwelling-place. *Item*, Gif the ſamin was gevin without ony maner of libel or petitioun gevin in or proponit be the perſewar; becauſe all ſentence is null and reduceabill, quhilk is gevin *abſque fundamento, viz. libello; quum omnis ſententia debeat eſſe conformis libello.* 13 *Mart.* 1540, Duncan Crawfurd *contra* Duncan Ferguſon, 1 *t. c.* 675.

C. XV. Reductioun be reſſoun of him quha is callit as warrand.

ALL ſentences gevin in ony actioun and cauſe, quhairin ony perſoun is callit as principal, and ane uther callit as his warrand, is of nane avail, and ſould be reducit, gif the ſaidis perſounis be not warnit perſonallie, or be thair Procuratouris, to heir and ſé the ſaidis decretis gevin and pronuncit, to wit, the principal in the principal cauſe, and the warrand in the cauſe of warrandice. *Item*, Gif baith the principal cauſe and actioun of warrandice at ony time ſleipit, or was continuit, and baith the ſaidis parties wer not lauchfullie warnit to heir the matter walknit, and reſſave farder proceſs. *Item*, Gif the perſoun callit as warrand in dew time deſire ane term to call ony perſoun for his warrand, and nevertheleſs the Judge grantis not the ſamin, bot procedis in geving of the decrete in the principal cauſe. *Item*, Gif the decrete be not gevin conform to the libel, or zit contene nather abſolvitour nor condemnatour, concerning

ing ony punct of the libel. *Item*, Gif the decrete of warrandice excedis the avail, quantitie, or tenour of the principal. 1 *Julij*, 1564, James Grene *contra Prouest and Baillies of* Perth, 1 *t. c.* 826.

C. XVI. Of the partie deceiſſand befoir the end of the pley.

SUMMOUNDIS beand intentit aganis ony perſoun, quha happinis to deceis *pendente lite*, and zit nevertheleſs the Judge procedis and gevis ſentence, the ſamin is null and of nane avail, be way of exceptioun. 15 *Feb.* 1560, Alexander *Lord* Seytoun *contra tenentis of* Ogſtoun. 12 *Mart.* 1560, 1 *t. c.* 779.

C. XVII. Decrete gevin aganis the partie that is deceiſt.

ANE decrete gevin aganis him that is deceiſt befoir the geving thairof, is null be way of exceptioun; and thairfoir na perſoun may be callit, as ſuccedand in the vice of him aganis quhom the decrete is gevin; becauſe na poſſeſſioun can be vitious in reſpect of ony decrete quhilk is null in the ſelf. 20 *Feb.* 1569, *Maiſter* Archibald Hamiltoun *contra* Agnes Blair, 1 *t. c.* 1361.

C. XVIII. Reductioun of decrete gevin at the inſtance of divers perſounis.

ANE ſentence gevin at the inſtance of divers and ſindrie perſounis, may be reducit for ony juſt or reſonabill cauſe be him aganis quhom it was gevin, contrare ony ane of the ſaidis perſounis; and it is not neceſſar that he call and perſew, for reductioun thairof, all thame at quhais inſtance the ſamin was gevin. 6 *Julij*, 1542, *Laird of* Ruthven *contra S.* Johne Campbell, 2 *t. c.* 119.

C. XIX. Of ſchawing of titill.

IN omnibus interdictis retinendæ, vel perturbatæ poſſeſſionis, as quhair the partie perſewar libellis the landis to pertene to him be virtue of his infeftment, and to be in poſſeſſioun thairof, be virtue of the ſamin, the perſewar *in ingreſſu litis*, beand requirit thairto be the defendar, aucht and ſould produce and ſchaw his titill, richt, and infeftment, quhairupon his libel is foundit. And gif he refuſis to do the ſamin, or gif the Judge decernis the ſamin at the term of probatioun, the proceſs, ſentence, and all that followis thairupon, is of nane avail, and may be reducit. 17 *Mart.* 1564, James Hering *contra* Andro Purves, 1 *t. c.* 834.

C. XX. Of repelling of ane Procuratour.

GIF ony perſoun be a lanchful and ſufficient Procuratour compeirand in judgment, havand and ſchawand ſpecial powar and mandat to that effect, deſire to be admittit for to perſew or defend in the cauſe, and the Judge refuſis to do the ſamin, the proceſs and ſentence is of nane avail, and may be reducit. 4 *Julij*, 1533, 1 *t. c.* 933.

C. XXI. All exceptiounis quhilk micht have ſtoppit the geving of the decrete, beand efterwart proponit, may reduce the ſamin.

ALL writtis, evidentis or exceptiounis, quhilk, gif thay had bene in dew time uſit and proponit in the firſt inſtance, micht have ſtoppit the geving of ane decrete or ſentence, the ſamin beand proponit, and provin in the ſecund inſtance, ar ſufficient for reductioun and retractatioun of the ſaid decrete. 23 *Feb.* 1565, Alexander Home *contra* John Home *and the gudeman of* Humbie. 15 *Julij*, 1562, Archibald Gray *contra Laird of* Craigiehall. And gif ony man havand landis pertening to him heritabillie under reverſioun, makis warning aganis the tenent to flit and remove thairfra, and the tenent alledge that the perſewar, the time he was infeft in

the ſaidis landis, was obliſt to him not to remove him thairfra, ſa lang as he bruikit the ſamin heritabillie, the tenent payand thairfoir to him zeirlie dewtie, then aggreit upon betwix thame; and the perſewar's obligatioun, quhairupon the ſaid alledgeance ſould be provin, may not be recoverit be the tenent, it beand in ane uther man's hand, quha will not deliver to him the ſamin, and ſwa decrete of removing be gevin aganis the tenent for non-probatioun of the ſaid alledgeance, gif he efterwart recover the ſaid obligatioun, he, be reſſoun thairof in the ſecund inſtance, may call and perſew for reductioun of the ſaid decrete. 14 *Julij*, 1555, Thomas Annan *contra* John Pitgot, 1 *t. c.* 839.

C. XXII. Of repelling of ane exceptioun.

GIF the Judge repellis ane relevant exceptioun, the quhilk the partie proponit befoir him in judgment, and offeris him to preive it lauchfullie, the proceſs, ſentence, and all that followit thairupon, is of nane avail, and ſould be reducit be the Lordis of counſal, albeit the partie preive not befoir thame in the ſecund inſtance the exceptioun proponit be him befoir the Judge in the firſt inſtance; for he is not bund nor obliſt of the law to preive the ſamin, bot ſould preive all uther exceptiounis proponit be him in the ſecund inſtance, for reductioun of the ſaid decrete. 5 *Mart.* 1540. 24 *Mart.* 1541, Robert Bruce *contra Abbot of* Halirudhous, 2 *t. c.* 21.

C. XXIII. Of null defence.

ANE decrete or ſentence gevin aganis ony perſoun, or aganis his predeceſſour, for null defence, or for non-compeirance, may be reducit thairfoir be him; becauſe in the ſecund inſtance it is leaſum to him in this cais *non allegata allegare, & non producta producere.* 22 *Mart.* 1541, Johne Haliburton *contra* Helene Rutherfurd, 2 *t. c.* 84.

C. XXIV. Of feriat time.

DECRETE gevin be ony Judge within the feriat, or cloſs time of harveſt, not havand diſpenſatioun of the Lordis of counſal to ſit at that time, is of nane avail, and may be reducit, ſpeciallie gif the ſamin be alledgit and objectit in judgment, 22 *Junij*, 1552, *The Quenis Advocat and* Mauſe Kincaid *contra the Schiref of* Striviling. And ſiclike, the proceſs, decrete, and all that followis thairupon, is of nane avail, and may be reducit, gif the Judge, or his deputis, held ony court of continuatioun, interloquitour, or reſſaving of probatioun, within the ſaid feriat time, and without the diſpenſatioun foirſaid. *Pen. Julij*, 1566, David *and* Adam Conplandis *contra Schiref of* Drumfreis *and Laird of* Kirkmichael, 1 *t. c.* 1208.

C. XXV. Of non-probatioun.

ALL decretis, ſentences, and rolmentis of courtis, ar of nane avail, and ſould be reducit, gif thay be gevin without ony probatioun or verificatioun of the clame, or alledgeance admittit to probatioun; or gif the ſamin be not ſufficientlie provin, and the matter not beand concludit befoir the geving of the decrete or rolment, 23 *Junij*, 1559, Agnes Crawmond *contra burgh of* Perth, 1 *t. c.* 773.

C. XXVI. He that obeyis the decrete, may not ſeik reductioun thairof.

ANE decrete beand gevin aganis ony partie, gif he, makand na proteſtatioun in the contrare, willinglie obtemperis and obeyis the ſamin, he ſall not be heard efterwart to ſay aganis the ſamin, or call

call or perſew for reductioun thairof, 15 *Feb.* 1532, 1 *t. c.* 604. Gif ony man obtene ane decrete befoir ane Judge, or gevis ane decretein his awin court, aganis ony man, as his awin man, ſervand or Officiar, to quhom he uſit of befoir to content and pay ane zeirlie fie or dewtie for his ſervice; and efter the pronunciatioun of the decrete, he, or ony in his name, contentis and payis willinglie to him his zeirlie fie or dewtie accuſtumat to be payit to him, as man, ſervand, or Officiar, befoir the geving of the ſaid decrete, he thairby *tacitè* and in effect paſſis fra the ſaid decrete, and thairfoir never can ſeik executioun thairof in ony time cuming: And gif be virtue thairof he diſplacis or puttis away ony man, ſervand, or Officiar, he aucht and ſould repone and reſtoir him agane in the ſamin place and eſtait quhairin he was of befoir, notwithſtanding the decrete gevin aganis him zit ſtandand unreducit, 16 *Novemb.* 1569, *M.* William Robertſone *Maiſter of the grammar ſchuil of* Edinburgh, *contra the town*, 1 *t. c.* 896. Gif ony perſoun fulfillis and obeyis ony part of ane ſentence or decrete, gevin aganis him, be reſſaving or doing ony thing be virtue thairof; or be himſelf, or be utheris in his name, ſeikis, reſſavis, or takis cautioun or ſovertie fra the uther partie, for fulfilling of his part thairof, he may not thairefter impugn the ſaid decrete, or perſew for reductioun thairof, *quia quod ſemel quis approbat, amplius reprobare non poteſt.* 24 *Martij*, 1563, Catherine Watſon *contra* Archibald Gadderer, 1 *t. c.* 1316.

C. XXVII. Reductioun of compriſing paſt upon ane decrete.

ANE decrete gevin aganis ony man, and his landis and movabill gudis beand compriſit thairfoir, and albeit thairefter the ſaid decrete be reducit, with all that followit thairupon, zit nevertheleſs the proceſs of compriſing on na wayis is underſtuid to be reducit; becauſe the ſamin requiris ane ſpecial declaratour of ane Judge, and ane ſeveral proceſs and ſentence of reductioun. 4 *Junij*, 1546, *Laird of* Kinfaunis *contra M.* Alexander Macbreck, 1 *t. c.* 980.

C. XXVIII. Of ane decrete gevin be the Lordis, for oucht that thay have zit ſene.

ANE decrete gevin be the Lordis, at the inſtance of ony partie, for oucht that thay had then ſene at the geving thairof, gif the partie, aganis quhom the ſamin is gevin, compeir and produce eſterwart ony richt or titill, the quhilk, gif it had bene producit of befoir, wald have ſtoppit the geving of the ſamin decrete, with all that followit thairupon, the ſamin aucht to be admittit in the ſecund inſtance, for reductioun of the ſaid decrete, and declarit the ſamin to have bene of nane avail. 12 *Decemb.* 1496, Walter Buchannan *contra Erle of* Menteith, 1 *t. c.* 193.

Anent arbitrie.

C. I. Quhat is arbitrie.

ARBITRIE is ane deid or dome of twa or ma perſounis, contendand and ſtriveand in ane civile queſtioun or cauſe, as gif it wer in judgment; for thay that ar arbiteris ſould, as Jugeis, travel to ſeik out and knaw the veritie of the debait; the perſewar ſould ſtrenthen and fortifie his cauſe and clame; the defendar ſould extenuat, mak leſs, or ſlokin and tak away the petitioun or complaint of his adverſar, with relevant exceptiounis, *Lib.* 2. *c.* 2.

C. II. Quha may be arbiteris, and quha may not.

ALL perſounis that ar not forbiddin be the law may be arbiteris; ſic as all frémen, not beand under the hand or powar of ane uther: And it is requirit that he quha ſall be arbiter be of gude brute and fame, *Lib.* 2. *c.* 3. Thir perſounis may not be arbiteris, ſuppois thay be choſin be conſent of baith the parties: 1. Bondmen or ſlavis. 2. Ane woman may not be ane Judge arbiter. 3. It is not leaſum to compromit in arbitrie ony perſoun wod or furious. 4. Or allutterlie deif or dumb. 5. Na man beand within the age of xxj. zeiris may be Judge arbiter, *Lib.* 2. *c.* 4. Bot ony Baillie or Judge ordinar may be ane arbitratour or amicable compoſitour, and be freindlie dreſs and compoſitioun may decide and end debaitis and contraverſies betwix parties, *Lib.* 2. *c.* 6.

C. III. The nombre of arbiteris.

COMPROMIT ſould be maid in perſounis of od and unevin nombre, as in ane, or thré: And gif thair be choſin thré, and it happin that thay concord not in pronuncing of thair deliverance, the decrete and ſentence of twa of thame aggreand ſall be lauchful and ſufficient: And gif thair be arbiteris choſin in evin nombre, as twa allanerlie, it may appeir the ſamin is not ane lauchful compromit; for gif the twa diſagré, the ane contrare the uther, the contraverſie that is compromittit ſall have na end; nevertheleſs be uſe and conſuetude, ſic compromittis ar lauchful: And in cais the arbiteris, beand evin in nombre, diſaſſent, then, gif thay wer choſin in judgment, the Judge befoir quhom thay wer choſin may compell thame to chuſe ane od man, that be his decrete, aggreand with the decrete of the ane half of the arbitratouris, the queſtioun and cauſe may be finallie endit, *Lib.* 2. *c.* 7.

C. IV. ANENT the electioun of the overs-man in arbitrie. *Ja. I. ſol.* 15. *act.* 98. 1 *Julij*, 1426.

C. V. Quhat cauſis may be compromittit.

ACTIOUNIS and cauſis of debt may be compromittit and put in arbitrie, and uther temporal cauſis, and alſwa ſpiritual actiounis, except in cauſis of matrimonie, in the quhilk compromit or arbitrie has na place. *Lib.* 2. *c.* 8.

C. VI. Of ane pane contenit in ane compromit.

IT is requirit of the law of this realme, that ane certane pane, or ſumthing equivalent thairto, be contenit in the compromit to be injoynit and upliftit fra him that happinis to be diſobedient; for it is not ſufficient that allanerlie the parties ſweir ane aith, or uplift thair handis, promittand to the arbiteris to fulfill and obey the ſaid decrete in all thingis or punctis; the quhilk maner of compromit, ſuppois it be lauchful be the commoun law, nevertheles, be the law of this realme, can have na ſufficient decrete followand thairupon, *Lib.* 2. *c.* 10. Becauſe the parties ar not haldin to fulfill ony decrete arbitral except thay pleiſe, bot gif thay do the ſamin for feir and dreadour of the pane contenit thairintill, *Lib.* 2. *c.* 8. *De except. c.* 2. *ex lib. Scon. Item*, It is to wit, gif ather of the parties be compellit to pay the pane, be reſſoun of his diſobedience, he may not be compellit thairefter to fulfill his part of the decrete; becauſe, gif the uther partie wald clame thame baith, he ſould ask thingis repugnant; for the pane is askit and ſould be payit be him quha obeyis not the decrete; and *judicatum* is askit, and ſould be payit be him

quha

quha obeyis the decrete; and ſwa he quha askis thame baith ſould not be heard, in reſpect he askis twa thingis contrarious ilk ane to uther. 2. Gif the partie takis him to the pane contenit in the decrete, the decrete ſould have ha executioun at his inſtance tuiching the principal. *Lib.* 2. *c.* 2.

C. VII. The acceptatioun of arbitrie.

THE arbiteris may not be compellit to accept the compromit; becauſe the office of arbritrie, and acceptatioun thairof, ar voluntar. 14 *Maij*, 1563, Johne Macanqual *contra* George Boſwell, 1 *t.* *c.* 1301.

C. VIII. Revocatioun of arbitrie.

ANE compromit not beand acceptit be the arbiteris, it is leaſum to the parties to revoke the ſamin. 14 *Maij.* 1563, Johne Macanqual *contra* John Boſwell, 1 *t.* *c.* 1301.

C. IX. Iſche and end of arbitrie.

COMPROMIT and arbitrie is diſſolvit and endit, gif ather of the parties or arbiteris happinis to deceis befoir the geving of the decrete. *Item*, The compromit expyris, gif the ſentence be not pronuncit in the cauſe befoir the end of the day contenit in the compromit, *Lib.* 2. *c.* 12. And the air of him quha is deceiſt may not be compellit to fulfill or obey the decrete, except ſpecial mentioun was maid in the compromit of the air, *Lib.* 2. *c.* 12. And gif na expreſs mentioun is maid of ony day in the compromit, within the quhilk decrete ſould be pronuncit and gevin, the compromit is endit and expyrit, gif the arbiteris pronunce not thair decrete within zeir and day efter the dait of the compromit, na prorogatioun thairof beand maid with conſent of the parties. 14 *Maij*, 1563, Johne Macanqual *contra* George Boſwell, 1 *t.* *c.* 300.

C. X. Of arbiteris refuſand to delivef.

GIF the arbiteris, or ony ane of thame, quha has acceptit the compromit, refuſis or delayis to deliver or pronunce thair decrete, thay may be compellit and conſtranit be ane Judge to do the ſamin. *Lib.* 2. *c.* 5.

C. XI. Laud of arbiteris gevin be the maiſt part.

ANE decrete arbitral gevin be the maiſt part, or be the half of the arbiteris, with the overs-man, is ſufficient and vailzieable, 6 *Novemb.* 1532. Albeit the arbiteris, gevaris thairof, be thay quha wer choſin for the ane part allanerlie, and the arbiteris electit for the uther part wer not preſent at the geving of the ſaid decrete; for it is ſufficient, gif thay wer preſent at the time of the compromit, and acceptit the ſamin on thame. *Ult. Feb.* 1560. 29 *Mart.* 1561, Alexander Paterſon *contra* David Cheiſlaw, 1 *t.* *c.* 1729.

C. XII. Decrete ſould be conform to the compromit.

THE decrete arbitral ſould be gevin conform to the compromit; utherwayis, gif the ſamin paſs and excede the boundis thairof, na executioun may follow thairupon. 12 *Feb.* 1549, 1 *t.* *c.* 1113.

C. XIII. The laſt decrete prejudgis the firſt.

TWA decretis arbitral beand gevin betwix twa parties be the ſamin arbiteris, the laſt makis derogatioun to the firſt. 19 *Decemb.* 1561, Elizabeth Maxwell *contra* John Walkinſchaw, 1 *t.* *c.* 1240.

C. XIV. The overs-man may pro-

DECRETE arbitral may be gevin and pronuncit be the overs-man allanerlie, gif the parties, efter the making of the compromit, con-

nunce the decrete.

ſent and aggré thairto. 4 *Maij*, 1562, James Wilkie *contra* Margaret Maver, 1 *t. c.* 1271.

C. XV. Decrete gevin to the hurt of ather of the parties.

DECRETE arbitral beand gevin be the arbiteris choſin be baith the parties, quhairby ather of the parties is heavilie and enormlie hurt in all his ſubſtance, gudis or geir, or in the maiſt part thairof, the ſamin decrete is of nane avail, and may be reducit. 17 *Mart.* 1541, Jonet Blak *contra* Andro Hamiltoun, 1 *t. c.* 541.

C. XVI. The arbiteris ſould be preſent, and pronunce in preſence of the parties.

GIF thair be twa or ma arbiteris choſin, thay ſould be all preſent, and conſent to the geving of the decrete, except ſpecial proviſioun be maid in the contrare in the compromit: And ſiclike, the arbiteris ſould not deliver bot in preſence of baith the parties: And gif thay do utherwayis, thair deliverance is of nane avail, except be ſpecial proviſioun it be permittit and grantit to thame to pronunce in abſence of the ane partie, and in preſence of the uther, or in abſence of baith. *Lib.* 2. *c.* 8. *De except. c.* 2. *Ex lib. Ston.*

C. XVII. Of the place of the decrete.

ITEM, Gif it be ordanit and compromittit to ane certane place, the deliverance ſould be gevin in the ſamin place: And gif thair be na certane place contenit in the compromit, quhair decrete ſould be gevin, the ſamin ſall be gevin in the place quhair the compromit was maid and acceptit. *Lib.* 2. *c.* 9.

C. XVIII. In quhat cais the arbiteris may pronunce on *Haliday*.

ITEM, The arbiteris may not give decrete on *Haliday*, bot in thré caiſis, that is to ſay, gif the King or his Judge compel thame thairto; or gif thay do the ſamin with conſent of the parties; or gif thair be ony certane day contenit in the compromit, the quhilk wald expire and rin out, gif the arbiteris deliver not at that time. *Lib.* 2. *c.* 9.

C. XIX. Of ane decrete gevin efter the day of the compromit.

GIF ony compromit be maid be certane parties, anent ony debait or contraverſie betwix thame, and ony Jugeis arbiteris choſin be thame to that effect, with this reſtrictioun and conditioun, that the ſaidis Jugeis ſall give furth thair decrete and deliverance in the ſaid matter, ather incontinent, or befoir ony certane day prefixt and aggreit upon betwix the ſaidis parties, and expremit in the ſaid compromit; and it happin that the ſaidis arbiteris deliver ane decrete efter the ſaid day contenit in the ſaid compromit, na prorogatioun of the day beand maid with conſent of the parties; the ſamin deliverance and decrete, is, be way of exceptioun, null, and ſould have na executioun aganis the parties, quha conſentit not to the geving thairof, or to the prorogatioun of the day of the compromit. 17 *Maij*, 1491, Marion Cuninghame *contra* Robert Drummound, 1 *t. c.* 71. 4 *Decemb.* 1554, Jonet Aikman *contra* Sibilla Aikman, 1 *t. c.* 1181.

C. XX. Of ane decrete gevin befoir the day of the compromit.

CERTANE parties beand compromittit in arbiteris and amicabill compoſitouris, to ane certane day and place, gif thairefter it happinis that the ſaidis parties continue the compromit to ane uther day, and alſwa change the place thairof to ane uther place, and the arbiteris give the ſentence and decrete befoir the day to the quhilk the compromit was continuit, the ſaid decrete obliſſis not the parties, nather

nather can have execution aganis thame, except thay willinglie, of thair awin conſent, obey and fulfill the ſamin. *7 Mart.* 1505, Johne Bonar *of* Roſſie *contra* David Balfour *of* Carriſtoun, 1 *t. c.* 241.

C. XXI. How the arbiteris ſould pronunce.

ITEM, Arbiteris may not deliver as thay think reſſonabill, bot efter the lawis of the realme, except it be ſpecialie grantit and permittit be the parties to thame to judge as thay ſall think expedient, *Lib.* 2. *c.* 9. *Item*, The arbiteris ſould not give thair ſentence in writ, utherwayis than is contenit in the compromit. *De except. t.* 2. *Ex lib. Sconen.*

C. XXII. Interpretatioun of decrete arbitral.

GIF ane decrete arbitral is difficile and obſcure, in ſic ſort that it may not be cleirlie underſtuid, the ſamin ſould be interprete be the Jugeis arbiteris gevaris thairof: And thairfoir, gif executioun thairof be ſought be ony partie befoir ane Judge, he ſould remit the interpretatioun thairof to the Jugeis arbiteris gevaris of the ſamin. *5 April.* 1555, *The Ladie Fleming* contra *Lord* Fleming, 1 *t. c.* 1191.

C. XXIII. The executioun of ane decrete arbitral, and how the ſamin differis fra the ſentence of ane Judge.

THAIR is ane difference betwix the decrete of arbiteris and the ſentence, or dome of a Judge; for ane ordinar Judge may put his decrete to executioun, and puniſh the partie diſobedient thairto; bot ane arbiter may not puniſh the partie that is contumax and diſobedient to his deliverance, bot gif he have ſpecial powar gevin to him be the parties thairanent in the compromit, *Lib.* 2. *c.* 11. *De except. c.* 2. *Ex lib. Sconen.* And thairfoir ane ſentence and decrete arbitral beand gevin aganis ony partie, he aucht and ſould fulfill and obey the ſamin, and has na place to perſew for reductioun thairof, gif he, beand of perfeit age, was ſworn and obliſt in the compromit to ſtand at the decrete arbitral to be gevin betwix him and his partie, be the arbiteris choſin betwix thame: And ſiclike, the parties ar obliſt to obey the decrete, and may not reclame thairfra, gif in the compromit it was expreſſlie contenit, that quhat decrete ſould be gevin betwix him and his partie, thay renunce all maner of appellatioun or reclamatioun thairfra, *etiamſi ſequatur læſio enormis, vel in maxima quantitate*, 12 *Mart.* 1539, John Melvil *of* Carnebie *contra* Agnes Strang, 20 *Decemb.* 1552, 1 *t. c.* 506. Becauſe the effect of arbitrie is, that the ſentence thairof ſall ſtand, and be obeyit, quhidder the ſamin is juſtlie gevin or not, ſwa that it be not gevin expreſſlie aganis the law, or be fraud or deceipt done and committit be ony of the arbiteris; for ilk arbiter ſould be void of all fraud and guyle. *Lib.* 2. *c.* 12.

C. XXIV. Compromit ſtayis proceſs.

GIF ony actioun or cauſe be compromittit in freindis, or ony uther Jugeis arbiteris, the ſamin may not be perſewit befoir ony Judge *in foro contradictorio*, until the deciſioun or end of the compromit. *5 Decemb.* 1553, *Tenentis of* Dennie *contra Lordis* Fleming *and* Sanctjohn, 1 *t. c.* 1565.

C. XXV. Exceptiounis may not be aledgit aganis the executioun of the decrete.

NA exceptioun of iniquitie, nullitie, or uther quhatſumever, may be proponit or alledgit contrare the executioun of ane decrete arbitral lauchfullie gevin: Bot the proponer thairof ſould uſe and alledge the ſamin, be way of actioun, gif he pleiſis, for reductioun and

and retractatioun of the ſaid decrete. 11 *Feb.* 1540, Hamiltoun *contra* Hamiltoun, 2 *t. c.* 17.

C. XXVI. The time and effect of reclamatioun.

RECLAMATIOUN fra ane decrete arbitral aucht and ſould be maid be the partie findand himſelf hurt and skaithit, within ten dayis efter the geving of the decrete cumis to his knawledge; utherwayis the ſamin is of nane avail: And the ſamin beand lauchfullie in dew time interponit, and not beand diſcuſſit be the Judge, na innovatioun ſould be maid in the mater, nor na executioun paſs upon the ſaid decrete. 20 *Decemb.* 1552. 27 *Julij*, 1554. 5 *Maij*, 1556. 4 *Feb.* 1556, Alexander Levingſton *contra the Laird of* Glenbervie. 15 *Feb.* 1555, David Home *contra* Jonet Downie, 1 *t. c.* 1148.

C. XXVII. Dependance of reclamatioun ſtayis execution of the decrete.

RECLAMATIOUN beand dewlie interponit fra ane decrete arbitral, and dependand undecidit befoir the Judge, the executioun of the principal decrete aucht and ſould be ſuſpendit, ay and quhill the reclamatioun perſewit for reducing of the decrete be decidit befoir the Judge competent. 26 *Junij*, 1532, 1 *t. c.* 714.

C. XXVIII. The reclamant ſould mak faith that he has juſt cauſe to reclame.

RECLAMATIOUN interponit fra ane decrete arbitral is not ſufficient, gif it be not expreſſie contenit in the ſamin, that the reclamant maid faith, that he had juſt cauſe to reclame thairfra; and thairfoir, notwithſtanding he reclamis utherwayis, he aucht and ſould be compellit to keip and fulfill all punctis of the ſaid decrete arbitral. 29 *Maij*, 1568, Alexander Arthur *contra* George Waddel, 1 *t. c.* 911.

C. XXIX. Sumtime it is not leaſum to reclame.

GIF ony man ſubſcrive ane decrete arbitral gevin betwix him and ane uther partie, he may not thairefter reclame fra the ſamin, albeit he be heavilie hurt and prejudgit thairby. 14 *Julij*, 1543, *The Laird of* Dundas *contra the Laird of* Craigiehall, 2 *t. c.* 247.

C. XXX. Homologatioun of a decrete arbitral.

ANE decrete arbitral beand gevin be Jugeis arbiteris, choſin betwix twa parties, gif, efter the geving thairof, ony of thame has reſſavit ony thing contenit thairintill, or done ony deid be vertue thairof, he may not thairefter reclame thairfra; becauſe he homologatis and ratifyis the haill decrete, be fulfilling of ony part thairof, albeit the ſamin be never ſo littill. 26 *Feb.* 1566, Marion Montgomery *contra* Ninian Sempill, 1 *t. c.* 818.

C. XXXI. He quha ratifyis ane part of the decrete may not reclame thairfra.

DECRETE arbitral beand gevin betwix twa parties, gif ather of thame, be virtue of the ſamin decrete, reſſavis fra utheris ony thing ſpecifyit thairintill, he may not efterwart reclame thairfra, or call for reductioun thairof; becauſe, be reſſaving or fulfilling ony part thairof, he ratifyis and homologatis the haill. 7 *Martij*, 1541, *Mr.* John Spence *contra the Laird of* Pitblado, 1 *t. c.* 540.

C. XXXII. He quha acceptis the decrete, may not reclame thairfra.

DECRETE arbitral beand gevin betwix twa parties, gif ather of thame takis ane inſtrument in the handis of ane Notar, upon the geving and pronunciatioun of the ſamin, he thairby acceptis, affirmis, and homologatis the ſamin. *Ult. Julij*, 1560, *The Laird of* Ruthven *contra the Laird of* Banf.

C. XXXIII. Decrete arbitral beand

DIVERS actiounis intentit and perſewit in judgment, tuichand landis,

landis, tenementis, or uther gudis or geir, movabill or immovabill, ar ſindrie times endit and determinat be amicabill compoſitioun, compromit or arbitrie, the quhilk is callit final concord, becauſe it puts ane end to the pley; ſwa that it is not leaſum to ather of the parties to paſs thairfra, or contravene the ſamin, except he lauchfullie reclame thairfra, *Lib.* 1. *c.* 31. For quhair compromit is maid lauchfullie, and ane lauchful decrete followis thairupon, the ſamin puttis ane final end to the actioun and cauſe that was compromittit. *Quon. attach. c.* 92. lauchfullie gevin puttis final end to the cauſe.

GIF ather of the parties will not keip nor fulfill the compromit, nor decrete arbitral, gevin conform thairto, and the uther partie complene thairanent to the King or Judge ordinar, the ſaid partie ſall be chargit be ſure and ſicker pledgis, to compeir in judgment, to heir him decernit to fulfill and obey the ſaid decrete, or ellis to alledge ane reſſonabill cauſe quhy he ſould not do the ſamin; and then, gif the partie complenand findis in like maner ſure pledgis that he ſall perſew his actioun, and baith he and the defendar compeir in judgment at the day of compeirance, in this cais, gif it be fund be the Judge that the defendar has not fulfillit, or has contravenit the decrete arbitral foirſaid, he ſall thairfoir remane in the King's mercie, and ſall be attachit under ſure pledgis, to remane untill he mak ſufficient ſecuritie to the uther partie anent the fulfilling and obeying of the ſaid decrete, and alſwa that he ſall content and pay to him, at the ſicht and modificatioun of the Judge, all the damnage and ſkaith ſuſtenit be him for the non-fulfilling or contraventioun of the decrete foirſaid. *Lib.* 1. *c.* 31. *De jud. c.* 124. C. XXXIV. Contraventioun of decrete arbitral maid be ane of the parties.

ANE decrete arbitral gevin betwix twa parties, concerning ony debaitis, or contraverſies and clamis, betwix thame, decernand thame to do to utheris *hinc inde*, certane pleaſouris and gude deidis, with proviſioun, that gif thay failzie to do or fulfill the ſamin, thay ſall pay in like maner *hinc inde*, ilk ane to utheris, ane certane ſowme of money, *nomine pœnæ*: Gif efterwart baith the ſaidis parties happin to contravene the ſaid decrete to utheris, thay aucht and ſould pay baith to utheris *hinc inde* the ſowme foirſaid, in name of pane, for thair contraventioun: And gif the ſowmis be equal and alike, ilk ane of the ſaidis parties ſall be haldin to diſcharge utheris, be way of compenſatioun. 19 *Julij*, 1502, Hector Bruce *of* Colpmalundie *contra Lord* Lindſay, 1 *t. c.* 127. C. XXXV. Contraventioun of decrete arbitral maid be baith the parties.

De actionibus civilibus.

ALL actiounis, pleyis, or cauſis, ar civil or criminal. Civil actiounis ar of debtis, landis, gudis or geir, quhilk perſewis and concludis ane pecunial pane, and not life or lim, as actiounis of fie and heritage, *Lib.* 1. *c.* 2. *Leg. Foreſt. c.* 29. *De judic. c.* 8. Sum civil actiounis pertene to the King's court, or his Juſtice; ſum uther pertene to the Schiref, and his juriſdictioun; and ſum utheris to the Proveſtis and Baillies of burghis and cities; and ſum utheris to the court of Biſchoppis, Abbotis, and to the eccleſiaſtical juriſ- C. I. Divers kindis of civil actiounis.

riſdictioun; and ſum utheris to the courtis of Erlis, Baronis, and utheris frehalderis, quha has powar to hald courtis, efter the tenour of thair infeftmentis, *Lib.* 1. *c.* 3. Actiounis of recognitioun, purpreſture, ſpuilzie, and ejectioun, and of the breve of mortanceſtrie, ſould be decidit and decernit befoir the King's juſtice, *Lib.* 1. *c.* 4, 7. *Item*, The breve of tierce, and actiounis concerning the kenning of women to thair tierce; actiounis of homage clamit be the ſuperiour; actiounis of reſſaving of relief, pleyis, and actiounis of debt; and ſindrie uther actiounis, quhilk ar not neceſſar to be heir expremit, ſould be followit and perſewit befoir the Schiref, *Lib.* 1. *c.* 4. And ſiclike, actiounis of propertie and frank-tenement pertene to the Lordis court: And gif it be provin that the Lord has failzeit in doing of juſtice and richt, the actioun may be advocat fra him to the Schiref-court, *Lib.* 1. *c.* 6. *Lib.* 3. *c.* 19. *De jud. c.* 10. And ſiclike, the Schiref ſould cognoſce and be Judge, gif the tenent or vaſſal complenis that his over-lord askis and takis mair dewtie or ſervice than he aucht or ſould give and pay to him for the landis and tenementis quhilk he haldis of him, *Lib.* 3. *c.* 19. *Item*, Actiounis of diſtreſs and poinding for debtis may be perſewit and decidit befoir the Juſtice, Schiref, or Proveſt and Baillies of burrowis, as it ſall pleis the King to give ony of thame commiſſioun and powar to that effect, *Lib.* 1. *c.* 7. *Item*, All mutis, and pleyis of dowrie, or tierce of teſtamentis, and of advocatioun of kirkis, and richt of patronage pertenis to the eccleſiaſtical juriſdictioun. *Lib.* 1. *c.* 5.

C. II. Civil actiounis ar *petitor* or *poſſeſſor*.

SUM civil actiounis concernis propertie and ground richt, and utheris ar of poſſeſſioun allanerlie, ſic as brevis of mortanceſtrie, and laſt preſentatioun of ony man to ane kirk or benefice, and of pleyis quhair contraverſie is, quhidder he quha has preſentit ony perſoun to ane kirk, did the ſamin be reſſoun of patronage pertening to him heritabillie, or in reſpect of richt of patronage pertening to him be reſſoun of ward; and actiounis of landis, quhairin queſtioun is, quhidder the ſamin is eccleſiaſtical or temporal landis, or of landis, quhairin queſtioun is, quhidder ony man died laſt veſt and ſaiſit in ſic landis of fie or wodſet, nouvelle diſſaſine, and ſic utheris. *Lib.* 3. *c.* 23. *De jud. c.* 95.

Anent brevis and retouris.

C. I. Of the ſerving of brevis the time of ane hoiſt and raid.

ANE breve beand proclamit and ſervit, the time of ane raid and hoiſt, gif ony perſoun havand interes to the landis, or uther richt quhairupon the ſaid breve is raiſit, happinis to be under proclamatioun, and actuallie preſent with the King, or his Lieutenent, the time of the ſerving of the ſaid breve, at the ſaid raid or hoiſt, or utherwayis imployit in his Hienes's ſervice; the ſamin breve and ſervice aucht and ſould be reducit, at the inſtance of him quha is under the ſaid proclamatioun, gif he has ony interes thairto ſpeciallie, he preivand ſufficientlie that the time of the halding of the court, and ſerving of the ſaid breve, he was in our ſoverane Lord's ſervice

vice foirſaid, in proper perſoun. 16 *Feb.* 1530, Patrik *Erle* Bothwell *contra* John Symontoun *Schiref of* Lanerk, 1 *t. c.* 46.

C. II. Of him that deſiris to be admittit for his interes.

GIF ony perſoun, in the time of the ſerving of ony breve beſoir the Judge competent, compeir in plane court, and alledge and ſchaw that he has ſpecial interes thairintill, and thairfoir deſyris to be admittit for his interes, to uſe his defenſis aganis the breve, or to ſay aganis the Judge, the Clerk, and remanent memberis of court, or to object and ſay aganis the proceſs, and the Judge not admittand him for his interes, proceid to the ſerving of the breve, the ſervice, proceſs, ſentence, and all that followit thairupon, is null and of nane avail. 9 *Julij*, 1498, Patrik Blacader *contra Schiref of* Peblis, 1 *t. c.* 101.

C. III. The breve may not be continewit without conſent of partie.

ANE breve beand proclamit to ane certane day, may on na wayis be continewit be the Judge to ane uther day, without conſent of partie: And gif the Judge proceid to the ſerving thairof, at the day to the quhilk it was continewit be him allanerlie, the ſervice, and all that followis thairupon, is null and of nane avail. 24 *Feb.* 1495, Archibald Ogilvie *contra Baillies of* Dundie, 1 *t. c.* 88.

C. IV. Of the perſounis of inqueſt not compeirand.

ANE breve of perambulatioun, or ony uther breve, beand raiſit and impetrat be ony man, and he, with his partie adverſaris conſent, elect, and chooſe certane perſounis to paſs with baith thair conſentis upon the inqueſt, for ſerving of the ſaid breve, and cauſe thame to be ſummoundit to ane certane day be our ſoverane Lord's letteris to that effect; gif ony of the ſaidis perſounis cum not at the day of compeirance, the Judge may not, without conſent of partie, elect, chooſe, or ſurrogat ane uther perſoun in his place, quhilk was not electit and ſummoundit be the partie befoir: And gif he dois in the contrare, the ſervice of the breve, with all that followis thairupon, is of nane avail, and may be reducit, except it be ſufficientlie provin befoir the Judge, that the perſoun quhilk compeirit not is deid, ſeik, furth of the cuntrey, or at the King's horn. 20 *Junij*, 1543, Hew Douglas *contra the Maiſter of* Borthvick, 1 *t. c.* 589.

C. V. The ſtrenth, force and validitie of retouris.

ITEM, Na retour is autentique, nor makis faith, quhilk cumis not out of the chancellarie ordourlie, 3 *Mart.* 1502, *The King* contra Alexander *Erle of* Buchan, 1 *t. c.* 136. Bot gif ane retour, ſeillit with all the ſeillis of the perſounis of inqueſt or with the maiſt and famous part thairof, albeit it be not fundin in the chancellarie, nor ſubſcrivit with the Clerk's hand thairof, has faith, and is autentique, gif the buke of *reſponde* and the chekkar rollis concordis and aggreis with the ſamin. 21 *Jan.* 1540, *The King* contra *Lord* Lyle.

C. VI.

BREVIS ſould keip the form of the chancellarie. *Ja.* IV. *fol.* 91. *act.* 47. *in prin.* 18 *Maij*, 1491.

C. VII. The retour ſould declair that the landis ar in the ſuperiour's handis.

IT is ſtatute and ordanit, that the Chancellar, in na time cuming, ſall grant or direct ony preceptis of ſaſine furth of the chancellarie, upon ony retour, bot gif the perſounis of inqueſt mak mentioun, and teſtifie in thair retour, that the landis and tenementis contenit in

in the ſamin ar in the King's or ſum uther ſuperiour's handis, be reſſoun of the deceis of him to quhom the raiſer or purchaſer of the breve alledgis him to be air: And ſiclike, na precept of ſaſine ſould be direct conform to ony retour, except the retour be ſeillit with the Schiref's ſeill, and the ſeillis of the maiſt part, at the leiſt of the maiſt famous perſounis of inqueſt. *Stat. Rob.* III. *c.* 1.

C. VIII. Anent knawlege of retouris and evidentis that paſs furth of the chancellarie.

NA perſoun can pretend or alledge ignorance of ony retour or evident that is paſt or extractit furth of the chancellarie. 27 *Jan.* 1569, Reidheuch *contra* Drummond, 1 *t. c.* 1368.

C. IX. Of the breve of mortanceſtrie or inqueſt, quhairof thair ar twa ſortis.

THAIR ar bot twa kindis of brevis in the chancellarie, for ſerving and entring of airis, the ane is the breve of the airis of line commounlie uſit, and the uther is the breve of tailzie; be the quhilk breve of tailzie, ane may be ſervit not onlie as air of tailzie, bot alſwa ane air may be ſervit as air mail, ſpeciallie gif he be not ane air of line: for all airis mail ar not tailzie, bot airis tailzie ar mail. 3 *Decemb.* 1551, 2 *t. c.* 239.

C. X. The ordour and maner of proceſs.

QUHEN ony perſoun deceiſſis veſt and ſaiſit in ony landis or tenement, as of fie and heritage, efter his deceis his air may ſeik ſiclike ſtate and poſſeſſioun as his predeceſſour had, and to that effect may rais ane breve of mortanceſtrie, he findand cautioun at the time of the impetratioun of the breve, that he ſall perſew his cauſe and breve; and thairefter, the breve beand lauchfullie proclamit, and the day of compeirance beand cum, the perſewar ſall preſent the breve in judgment to the Judge, and deſire him to opin it, and cauſe the ſame be red, and put to the knawledge of ane inqueſt: And gif ony perſoun havand interes compeiris to defend and oppone aganis the breve, he ſould have inſpectioun thairof, gif he deſiris the ſamin: And gif he findis ony fault, irrelevancie, or vice in the breve, or ony uther lauchful exceptioun to ſtop the ſamin, he may thairby caſs and annul the ſamin for that time, and paſs quite and fré, untill the perſewar rais ane new breve: Bot gif he can ſchaw na reſſonabill cauſe or exceptioun in the contrare, the ſamin ſall paſs to the knawledge of ane aſſiſe, *Quon. attach. c.* 31. *Lib.* 1. *c.* 13. And then ſall be choſin threttene perſounis, lauchful and ſufficient, efter the form of the breve, in preſence of the perſewar and defendar, or yet in preſence of the purſuer, and abſence of the defendar, beand lauchfullie warnit to compeir to the ſaid electioun, becauſe it is requirit that he be lauchfullie warnit thairto, to heir and ſé the perſounis choſin to paſs upon the inqueſt, and to repel thame, or ony of thame, fra paſſing upon the aſſiſe, gif he has ony reſſonabill cauſe to ſchaw quhy the ſamin ſould not be done: And in like maner, gif he, beand warnit as accordis of the law, failzies to compeir, nevertheles the perſounis of inqueſt ſall be choſin, and the breve ſall reſſave proceſs; for the breve may paſs to the knawledge of ane aſſiſe, at the deſire of the perſewar, in abſence of the defendar, beand lauchfullie warnit thairto, als weill as gif he war perſonallie preſent in the court: And gif the aſſiſe deliveris in favour of the perſewar, the landis ſall be adjudgit and gevin to him in poſſeſſioun and ſaſine; bot nevertheles it is leaſum to the defendar, quha has tint the poſſeſſioun of the land, be de-

liverance of the ſaid inqueſt, to call and perſew in ony time efterwart for the ground richt and propertie of the ſaidis landis, gif he has ony richt or titill to do the ſamin: And gif the aſſiſe deliver in favouris of the defendar, poſſeſſioun and ſaſine of the ſaidis landis ſall thairefter pertene to him: Bot it is leaſum to the perſewar to intent actioun thairefter, gif he pleaſis, upon the ground richt of the ſaidis landis: For as ane ſentence gevin upon the ground richt of ony landis nather ſtoppis, nor takis not away the actioun, quhilk may be proponit tuiching the poſſeſſioun thairof; evin ſwa ane ſentence gevin upon the poſſeſſioun be ane aſſiſe, upon the breve of mortanceſtrie, is na wayis prejudicial or hurtful to the actioun of the ground richt and propertie of the ſaidis landis. *Lib.* 3. *c.* 26.

C. XI. Proclamatioun of brevis.

ANENT the proclamatioun of brevis. *Ja.* IV. *ſol.* 108. *act.* 129. 11 *Mart.* 1503.

Item, A breve of inqueſt aucht and ſould be proclamit upon fivetene dayis warning *excluſivè*, be ſic perſounis allanerlie as has powar to proclame the ſamin in ane lauchful, publict and convenient place, that is to ſay, the principal burgh of the ſchiref dome, bailliarie, or uther place quhair the landis contenit in the breve lyis, to the effect that the knawledge thairof may cum to the audience of all parties havand or pretendand to have interes thairintill; utherwayis the ſervice, retour, ſaſine, and all that followis thairupon, is of nane avail, force nor effect. 24 *Feb.* 1491, Hutcheon Mackanrik *contra Mr.* Walter Kennedie *Baillie-depute of* Carrik. 7 *Novemb.* 1500, *The King* contra Henrie Douglas. 12 *Jan.* 1516, *Lord* Drummond *contra* Andro Galbraith, 1 *t. c.* 73.

C. XII. How the perſounis of inqueſt ſould be ſummoundit.

IT is ſtatute and ordanit, that becauſe divers and ſindric our ſoverane Lord's lieges ar mony wayis troublit and prejudgit in thair landis and heritage, be brevis of inqueſt ſervit favourablie, and be ignorant perſounis; that na Schiref, nor Judge, cauſe ſerve ony breve of inqueſt, or put the ſamin to the knawledge of an aſſiſe; bot gif he do the ſamin in plane court, be the maiſt worthie and ſufficient perſounis within his juriſdictioun, ſummoundit and warnit upon the premonitioun of fiftene dayis, to paſs upon the inqueſt for ſervice of the ſaid breve. *Stat. Rob.* III. *c.* 1.

ANE act in the contrare heirof is maid be King *James* the feird. *Ja.* IV. *fol.* 108. *act.* 129. 11 *Mart.* 1503.

C. XIII. Of the perſounis aganis quhom the breve is raiſit.

THE breve of mortanceſtrie ſumtimes is raiſit be ane minor of les age, contrare ane major, ſumtimes ane minor aganis ane uther minor, and ſumtimes ane major contrare ane mjnor, *Lib.* 3. *c.* 26. Quhen he that is of les age raiſis the ſaid breve aganis him that is of perfeit age, the eſſonzie of him that is of perfeit age has na place contrare him that is of les age; and thairfoir the aſſiſe ſall proceid, quhidder the partie defendar compeiris or not; for quhy, gif he wer preſent in court, he micht alledge nathing aganis him that is minor, quhilk of the law micht ſtop the aſſiſe; and thairfoir gif he compeiris not, he ſall not be bidden upon. And gif the aſſiſe deliver in favouris of the minor, that is perſewar, he ſould have thairfoir poſſeſſioun of the landis clamit be him, and

may not be compellit to anſwer upon the ground richt and propertie of the landis foirſaid, until he be of perfeit age. *Lib.* 3. *c.* 25, 26, 27. *De judic. c.* 99, 100.

QUHEN he that is of les age raiſis ane breve of inqueſt aganis him that is in like maner of les age, the ſamin ſould be ſervit, and the aſſiſe ſould proceid in the ſame maner as is abone expremit, quhair the perſewar is minor, and the defendar major, and of perfeit age, *Lib.* 3. *c.* 26. *De jud. c.* 99. Quhen he that is of perfeit age raiſis ane breve of mortanceſtrie aganis him that is minor, and of les age, the defendar compeirand may eſſonzie himſelf, and ask delay be reſſoun of his les age and minoritie, and alledge that he may not be compellit to anſwer in the cauſe of the breve of mortanceſtrie, until he be of perfeit age: And it is to wit, that gif he wald be this reſſoun ſtop the aſſiſe, it is requirit of the law that he alledge himſelf to be in poſſeſſioun and ſaſine of the landis or tenementis clamit fra him be the perſewar foirſaid, that is major, and of perfeit age: And mairover, it is neceſſarlie requirit, that he alledge that his father, or uther predeceſſour, died veſt and ſaiſit in the ſaidis landis or tenementis; becauſe gif ony landis, beand conqueiſt be the minor, and poſſeſt be him be reſſoun of his awin richt allanerlie, and not be the richt of his predeceſſours, ar clamit and askit fra him, he may be compellit, notwithſtanding his les age and minoritie, to anſwer to the breve of mortanceſtrie, and alſwa anent the propertie and richt of the ſaidis landis, *Lib.* 3. *c.* 26. *De judic. c.* 100. And gif the perſewar, be way of reply, alledge, that the ſaid defendar's predeceſſouris died in ſaſine of the landis or tenementis acclamit, not as of fie, bot as of ward; then ſuppois the principal cauſe and ſervice of the breve be ſtoppit and delayit, be reſſoun of the defendar's minoritie and les age, as ſaid is; nevertheleſs ane aſſiſe may be ſummoundit, and tak inquiſitioun of the maner and kind of the poſſeſſioun that the ſaid minor's predeceſſour had of the ſaidis landis the time of his deceis; and efter thair dome and judgment it ſall be determinat: For gif it be fund that he had na poſſeſſioun nor ſaſine, bot be reſſoun of ward, then the perſewar that clamis ſaſine aganis the minor, aucht and ſould obtene the ſamin: And gif it be fund that the predeceſſour of the ſaid minor died in ſaſine of the ſaidis landis, as of fie, then he ſould have and bruik peciable poſſeſſioun and ſaſine thairof, induring the time of his minoritie; bot quhen he cumis to perfeit age, he may be compellit to anſwer anent the propertie of the ſaidis landis, at the inſtance of the ſaid perſewar, or of his airis. *Lib.* 3. *c.* 26. *De jud. c.* 100.

C. XIV. Contraverſie anent the age.

GIF the defendar, beand minor, compeiris and alledgis that he ſould not anſwer, becauſe he is of les age, and it is replyit that he is major, and of perfeit age; in this cais it may be provin, be lauchful and ſufficient witneſſis, ſummoundit to that effect, that he is major, and of perfeit age; the quhilk beand provin, he may be compellit to anſwer as major in his actioun and cauſe, be reſſoun of the ſaid majoritie and probatioun thairof, and may be compellit generallie in all uther cauſis, to anſwer as major at the petitioun and inſtance of uther parties; bot in ony time thaireſter may defend him-

himſelf aganis uther perſewaris, be reſſoun and privilege of his age. *Lib.* 3. *c.* 27. *De jud. c.* 100.

C. XV. How the breve may be ſtoppit, to paſs to the knawledge of ane inqueſt.

GIF baith the perſewar and the defendar compeiris in court, the perſewar ſould ſpeir at the defendar, gif he has ane reſſonabil cauſe to ſchaw quhy the breve ſould not be put to the knawledge of ane aſſiſe; and it is generallie trew that the aſſiſe may not procede, gif the defendar compeir in court, and confeſs that the perſewar's predeceſſour died veſt and ſaiſit in the landis acclamit, as of fie, at our ſoverane Lord's peax, and conform to the reſt of the punctis of the breve: Bot gif he confeſs that he died veſt and ſaiſit, as of fie, and confeſs not the reſt of the punctis of the breve, the aſſiſe may procede upon the reſt of the articlis and punctis of the breve, quhilk ar not confeſt nor admittit be the defendar. *Lib.* 3. *c.* 23. *De jud. c.* 95.

C. XVI.

ANENT exceptiouns to be proponit againſt the breve of inqueſt. *Ja.* IV. *fol.* 108. *act.* 129. 11 *Mart.* 1503.

C. XVII. Of him quha proponis frivole exceptiounis.

GIF ony man raiſis ane breve of inqueſt, to be ſervit as air to ony landis, and the defendar maliciouſlie object aganis him, baſtardrie, or ony uther exceptioun, and it be fundin eftarwart that the ſamin is not of veritie, and that it was alledgit onlie to hinder and delay the ſaid ſervice, the perſewar has juſt actioun aganis the defendar, for all damnage, coiſt, skaith and interes ſuſtenit be him throw the proponing of the ſaid alledgeance. 4 *Mart.* 1505, Murial Calder *contra* William Thane, 1 *t. c.* 252.

C. XVIII. At quhat tim the breve ſould paſs to the knawledge of ane inqueſt.

GIF thair be na exceptioun or reſſoun proponit and objectit be the defendar, quhilk of the law is ſufficient to ſtop ane aſſiſe, the breve ſall be put to the knawlege and inqueſt of ane aſſiſe of lauchful and ſufficient men, ſummoundit, choſin, admittit, and ſworn to paſs upon the ſaid aſſiſe, to deliver conform to the punctis of the breve; efter quhais ſuith-ſaying and deliverance ſaſine of the landis ſall be gevin, and dome of court, to the ane partie or to the uther. *Lib.* 3. *c.* 24. *De jud. c.* 98.

IT is ſtatute, that the breve of mortanceſtrie ſall not be pleidit be challenge and clame of the partie alanerlie, bot be ane aſſiſe of the beſt and worthieſt of the cuntrey, *Lib.* 4. *c.* 45. *Aſſiſ. Reg. Da. c.* 42. And gif the defendar be content that the ſamin paſs to the cognitioun of ane aſſiſe, the perſewar aucht and ſould grant the ſamin. *De jud. c.* 93.

C. XIX. Anent the maner of ſervice.

IN ſervice of ane breve of inqueſt the perſounis of inqueſt aucht and ſould ſerve *affirmativè*, conform to the haill clame, gif the ſamin be ſufficientlie provin and verifyit: And gif ane part thairof be provin, and the uther part thairof not provin, thay ſould ſerve *affirmativè*, conform to the part that is provin, and zit may not be compellit to ſerve *negativè*, anent the remanent part not provin. 27 *April.* 1540, 2 *t. c.* 317.

C. XX. The remeid of him that

ANE breve of inqueſt beand raiſit at the inſtance of ony perſoun, to be ſervit narreſt and lauchful air to his predeceſſour, and he

is ſtoppit to obtene ſervice.

he be ſtayit or ſtoppit, to be enterit or ſervit, be objecting of baſtardrie, the quhilk beand diſcuſſit be the ſpiritual Judge, and he fund lauchfullie gottin and born, and thairefter he raiſis ane uther breve, and the ſervice in like maner be ſtoppit be ony privie ſaſine producit be the defendar, of the ſamin landis, gevin to ane uther perſoun, and the ſamin, at the perſewar's inſtance, be reducit and annullit; and thairefter zit, as of befoir, raiſis ane new breve, and nevertheles be ſtoppit, as of befoir, be ony privie ſaſine, or be ony uther ſaſine, gevin conform to the ſuperiour's precept, or utherwayis; he beand ſwa troublit, ſtoppit and delayit may mene him to the Lordis of counſal, and obtene letteris, chargeand his partie adverſar, and all utheris havand interes, to compeir befoir thame at ane certane day, bringand with thame the ſaidis ſaſines and richtis, quhilk thay have or will uſe in time cuming, for ſtopping of him to be ſervit, and to heir and ſé the ſamin reducit. 18 *Junij*, 1566, Donald Campbell *contra* Johne Grahme, 1 *t. c.* 847.

C. XXI. Anent entres to compriſit landis.

GIF he fra quhom landis ar compriſit decciſſis befoir ſaſine be taken be ony perſoun, be virtue of the ſaid compryſing, his air aucht and ſould be retourit to the ſamin compriſit landis; becauſe compriſing of landis, and aſſignatioun thairof, ſould not ſtop the ſervice, except ſaſine be ſhawin and producit befoir the perſounis of inqueſt, conform to the ſaid compriſing, and paſt thairupon. 24 *Feb.* 1555, *The Comptroller* contra *Lord* Sempill, 2 *t. c.* 260.

C. XXII. Conjunct-fie ſtoppis the entres of airis.

GIF ony perſoun raiſis brevis of inqueſt, to be ſervit as air to ony landis, and the time of the ſerving thairof ane Lady conjunct-fear of the ſamin, or ony part thairof, ſhaw and produce befoir the perſounis of inqueſt hir infeftment of conjunct-fie, the ſaid perſounis on na wayis aucht to ſerve the ſaid breve *affirmativè*; becauſe conjunct-fie lauchfullie confirmit be the King, or ſuperiour, be the law of this realme ſtoppis the ſervice of brevis of inqueſt: And gif thay do in the contrare, and procede in the ſaid ſervice, thay commit manifeſt and wilful errour. 13 *Mart.* 1528, Johne Quhytheid *contra* Johne Matthieſone, 1 *t. c.* 322. 25 *Jan.* 1569, Reidheuch *contra* Drummond, 1 *t. c.* 1360.

C. XXIII. Conjunct-fie of ane part ſtoppis entres to the haill.

GIF the perſounis that paſſis upon the aſſiſe, for ſervice of ane breve of inqueſt, retouris and deliveris all and haill the landis contenit in the clame, to have bene in ony perſounis handis, the time of the defunct's deceis, the ſervice, retour, and all that followit thairupon, is of nane avail, and may be reducit, gif the ane half, or ony uther part of the ſaidis landis, pertenit the time of the ſervice to ony woman or Lady be reſſoun of conjunct-fie; becauſe thay retourit and deliverit wrangouſlie the haill landis to be in the handis of the ſuperiour, the ſamin, or ony part thairof, beand in the handis of the conjunct-fear be reſſoun hir ſaid conjunct infeftment was ſhawin and producit befoir thame; utherwayis the ſamin not beand ſhawin, thay commit ignorant error allanerlie. 19 *Junij*, 1561, *The King* contra William Gordoun, 1 *t. c.* 369.

C. XXIV. Battardrie ſtoppis the

ANE breve of inqueſt beand impetrat and raiſit be ony perſoun, and in the mene time of the ſervice thairof the partie defendar objectis

jectis in plane court aganis the perſewar, that he is baſtard; gif the Judge, notwithſtanding of the ſaid alledgeance and exceptioun, procedis to the ſerving of the ſaid breve, and will not remit nor refer the ſaid exceptioun to the ſpiritual Judge, he beand lauchfullie requirit thairto, the ſervice, retour and ſaſine, and all that followis thairupon, is of nane avail, *Ult. Maij*, 1496, Thomas Kenedie *of* Barganie *contra the Steuart of* Kirkcudbricht, 1 *t. c.* 91.

ſervice of the breve of inqueſt.

GIF the defendar, in the ſerving of ane breve of inqueſt, propone and object exceptioun of baſtardrie aganis the perſewar, the Judge aucht and ſould not procede to the ſerving of the breve, untill the cauſe of baſtardrie be decidit and decernit befoir the ſpiritual Judge: And gif he dois in the contrare, his ſervice, retour, and all that followis thairupon, is of nane avail, and may be reducit, albeit that the perſewar, the time of the ſaid ſervice, and proponing of baſtardrie, ſchaw and produce ony ſentence of divorce gevin be the Judge ſpiritual betwix his father and mother, quhairin he is fund to be lauchfullie gottin and born. 23 *Mart.* 1533, Margarer Butter *contra* Johne Butter.

C. XXV. Of the exceptioun of baſtardrie.

ANE air quha has raiſit brevis of inqueſt, to be ſervit befoir ony Judge to his predeceſſouris landis, may not be ſervit befoir him, bot to thay landis allanerlie quhilk lyis within his juriſdictioun. 20 *Novemb.* 1540, 1 *t. c.* 1377.

C. XXVI. Na Judge has powar bot within his awin juriſdictioun.

GIF ony perſoun raiſis ane breve of inqueſt, and obtenis ſervice thairof, as air to ony landis or tenementis within burgh, or outwith the ſamin, quhairof the richt pertenis to his Hienes; gif nather his Hienes, nor Advocat, be warnit to the ſaid ſervice, the ſamin, with the retour, ſaſine, and all that followis thairupon, may be reducit: provyding that it ſall be leaſum to him to raiſe new brevis agane, and warn the King, or his Advocat to the ſerving thairof. 7 *Novemb.* 1500, *The King* contra *Lord* Cathcart, 1 *t. c.* 185.

C. XXVII. Anent the calling of the King and his Advocat.

GIF ony man's evidentis be tint or deſtroyit, be chance or violence, ſic as peſt, weirfair, or birning, ſwa that efter his deceis his air has na ſufficient titill to enter to his landis, he may mene him heiranent to the Lordis of counſal; quha having conſideratioun thairof ſall direct thair letteris to the Judge ordinar of thay boundis quhair the ſaid evidentis wer tint, chargeand him to tak cognitioun be ane inqueſt, of the beſt and worthieſt men, ſpeciallie within the ſaid boundis, quhat poſſeſſioun the ſaid perſoun that is deceiſt had of the landis acclamit, the time of his deceis; and to retour thair anſwer incloſit, under the ſeillis of the ſaid Judge, and of the perſounis of inqueſt, or the maiſt part thairof: And the ſamin beand retourit be thame, and the Lordis findand thairby the perſoun that is deceiſt to have bene heritabill poſſeſſour of the ſamin landis, the time of his deceis, thay aucht and ſould decern and ordane him to be ordourlie ſervit be brevis of inqueſt raiſit furth of the chancellarie, or utherwayis, as thay ſall think expedient; certifying the perſounis that ſall happin to paſs upon the inqueſt of the breve, that thay thairby ſall not incur ignorance, nor wilful errour, notwithſtanding that the perſewar ſchaw not to thame the time of

C. XXVIII. Of ane air, quhais evidentis ar brint or tint.

the ſervice, his predeceſſour's evidentis of the ſaidis landis; ſaif- and all uther parties richt and interes, to be proponit the time of the ſaid ſervice. 18 *Junij*, 1532, Johne Stirling. *5 Feb.* 1535, Patrik Dikſone, 1 *t. c.* 662.

C. XXIX. The King may call for reductioun of the retour, albeit na ſaſine has followit thairupon.

GIF the perſounis of inqueſt retour *affirmativè* ony man, as nar- reſt and lauchful air to his predeceſſour, thairefter the King, gif he pleiſis, may call and perſew thame quhen and quhair it effeiris, for reductioun of the ſaid ſervice and retour; albeit it be of veritie, and be objectit be the perſounis of inqueſt, and the partie defendar, that the King has na interes in the reductioun, be reſſoun thair has na ſaſine followit upon the ſaid retour and ſervice. 26 *Feb.* 1561, *The Quenis Advocat* contra *Lord* Roſs, 1 *t. c.* 123.

C. XXX. A retour reducit for errour committit in ane part, is alſo reducit in the haill.

BE the commoun law, practique, and conſuetude of this realme, gif ony retour be reducit and decernit to be of nane avail, force nor effect, in ony point or part thairof, the ſamin is null and of nane a- vail, in all and haill; becauſe the ſamin beand reducit in ane part, is underſtuid to be reducit in the haill, that is, *non pro tanto, ſed pro toto*, 13 *Junij*, 1533, *M.* Adame Otterburne *contra N.* 26 *Ju- nij*, 1534. 16 *April.* 1535, *et paſſim in regro*, 1 *t. c.* 228. And thairfoir, the proceſs, or ſervice of the breve, with all and haill the retour, and all that followis thairupon, is of nane avail, and ſould be reducit, gif the perſounis of inqueſt retour and deliver, that he to quhom the perſewar clamis him air died laſt veſt and ſaiſit of all and haill the landis, as of fie, albeit of veritie he, befoir his deceis, infeft and ſaiſit ane uther in ane certane part of the ſaidis landis, haldin of himſelf in cheif; becauſe the ſaidis perſounis retourand *ſimpliciter*, that he died veſt and ſaiſit in all and haill the landis, as of fie and propertie, ane part thairof beand ane tenandrie of the ſamin the time of his deceis, committit errour, and deliverit wrang- ouſlie. 27 *Mart.* 1546, *The King* contra *N.* Weymis *of* Latho- ker. 8 *Julij*, 1546, 1 *t. c.* 617. 14 *Decemb.* 1541, 1 *t. c.* 533. 10 *Maij*, 1557, *Quenis Advocat* contra *Laird of* Cokpuil, 1 *t. c.* 1206.

C. XXXI. Quhidder reductioun of ane part of the retour inducis the reductioun of the haill.

ALL the Lordis of counſal confeſſis, that be the law and pra- ctique of this realme, all and haill ane retour may be reducit, for errour committit in ony part thairof; albeit, be the practique, ſum retouris may be reducit in ane part, and ſtand unreducit in the reſt. 21 *Jan.* 1540, *The King* contra *Lord* Lyle, 2 *t. c.* 11.

C. XXXII. The principal ground beand tane away, the acceſſour cannot ſtand.

GIF infeftment of landis be reducit, all retouris followand upon the ſamin, as upon ane fundament, with all that followit thairupon, is underſtuid thairby to be reducit, without ony ſpecial declaratour of reductioun. *5 Mart.* 1562, James Stewart *contra Lord* Erskin, 2 *t. c.* 291.

C. XXXIII. The perſounis of inqueſt ſould anſwer to all the punctis of the breve.

THE perſounis of inqueſt committis errour, gif thay, in thair re- tour or anſwer, give na declaratioun anent the veritie of ony ſub- ſtantial punct or article of the breve; becauſe the time that thay paſs upon the inqueſt, thay give thair corporal aith to declare the veritie anent all and haill the punctis of the ſamin. 6 *Jan.* 1562,

The

The Quene and William Hamiltoun *contra Lordis* Sanquhar *and* Cathcart, 1 *t. c.* 798.

C. XXXIV. Certane cauſis of reductioun.

THE ſervice upon ane breve of inqueſt may be reducit for ony ane of thir four cauſis following: 1. Gif the breve benot lauchfullie proclamit at the heid-burgh of the ſchire. 2. Gif the partie be not lauchfullie warnit for his defence. 3. Gif the Judge continues the ſervice of the ſaid breve fra ane day to ane uther, without conſent of the partie. 4. Gif the Judge reſſavis and admittis upon the inqueſt the greiteſt part of the nombre thairof dwelland in uther ſchyris and townis, and the leiſt part dwelland within the ſchirefdom and burgh quhairin the landis contenit in the breve lyis. 14 *Octob.* 1548, Alexander Hething *contra Baillies of* Dundie. 6 *Mart.* 1515, *The King* contra Johne Foreſtar, 1 *t. c.* 15, & 378.

Alſo, ane breve of inqueſt direct furth of the chancellarie to the Schiref, or ony uther Judge, to ſerve ony perſoun to ony certane landis lyand within that ſchire, gif the ſaid Schiref cauſis cheiſe, or admitttis ane inqueſt of perſounis dwelland in ane uther ſchire, pretermittand the perſounis of the ſchirefdome or place quhair the landis lyis, the ſaid ſervice, retour, and all that followis thairupon, is null and of nane avail, force nor effect, and aucht to be reducit, 14 *Mart.* 1488, Alexander Stratoun *contra Schiref of* Edinburgh, 1 *t. c.* 60. becauſe the Judge ſould cauſe ane aſſiſe, or at leiſt the maiſt part thairof, to be choſin of the beſt and worthieſt, quha beſt knawis the veritie of the mater, as he is commandit be the tenour of the ſaid breve. 22 *Mart.* 1478, William Sydſerf *contra the Baillies of* Edinburgh, 1 *t. c.* 17.

C. XXXV. Reductioun be reſſoun of the indorſatioun of the breve.

THE Officiar executer of the breve of inqueſt, amangſt utheris, aucht to inſert in his indorſatioun expreſlie and ſpeciallie the zeir of our Lord in the quhilk the ſamin is proclamit and execute; the quhilk gif he omittis to do, the ſaid indorſatioun, with the retour, ſaſine, and all that followit thairupon, is of nane avail. 2 *April.* 1492, *The King* contra *Schiref of* Fife, 1 *t. c.* 81.

C. XXXVI. Reductioun be reſſoun of proclamatioun.

ANE breve of inqueſt not beand proclamit, nor zit ſufficientlie indorſit, and nevertheles put be the Judge to the knawledge of ane inqueſt, is null and of nane avail, with the ſervice, retour, ſaſine, and all that followit thairupon, albeit nathing be objectit be ony partie in the contrare, 13 *Feb.* 1495, *The King* contra *Schiref of* Air, 1 *t. c.* 87.

C. XXXVII. The perſounis of inqueſt ſould be ſworn.

GIF ony perſoun or perſounis be put in the retour, quha was not ſworn nor admittit to paſs upon the inqueſt for ſervice of the breve, the ſervice, retour, ſaſine, and all that followis thairupon, is of nane avail. 27 *Octob.* 1495, Johne Colquhoun *contra* David Haliburtoun, 1 *t. c.* 63.

C. XXXVIII. The Judge and perſounis of inqueſt, at ane time ſould affix thair ſeillis.

ANE retour, ſaſine, and all that followis thairupon, is null and of nane avail, and aucht and ſould be reducit, gif the Judge or his depute's ſeill be affixt thairto at ane certane day, at the quhilk day nane of the perſounis that paſt upon the inqueſt deliverit nor retourit upon the punctis of the breve. *Item*, Gif the perſounis of inqueſt,

inqueſt, or, at the leiſt, the maiſt part thairof, convenit not, nather war preſent at the day of deliverance, and making of the retour. 29 *Jan.* 1509, *The King* contra *Schiref of* Air, 1 *t. c.* 158.

C. XXXIX. He quha gevis partial counſal ſould not paſs upon the aſſiſe.

GIF the partie defendar object and alledge that ony perſoun ſummonnit and compeirand to paſs upon the aſſiſe, and ſervice of the breve of inqueſt, has gevin partial counſal to the perſewar in the ſamin matter, and thairfoir deſyris him to purge him thairof, and the Judge refuſis to cauſe him do the ſamin, and nevertheleſs admittis him upon the ſaid inqueſt; the ſervice, retour, and all that followis thairupon, is of nane avail, force nor effect. 11 *Decemb.* 1503, *The King, and* Alexander Seytoun *of* Tullibodie, *contra Schiref of* Clakmannan, *and* Johne Creychtoun *of* Cairnis, 1 *t. c.* 65.

C. XL. The breve ſould not be ſervit befoir the day of the proclamatioun.

THE ſervice of ane breve of inqueſt, with the retour, and all that followis thairupon, is of nane avail, and may be reducit, gif the perſounis of inqueſt proceid to the ſervice of the breve befoir the day to the quhilk the ſamin is proclamit. 6 *Mart.* 1515, *The King* contra Johne Forreſtar, 1 *t. c.* 378.

C. XLI. The perſounis of inqueſt ſould declare the time of non-entres.

THE perſounis of inqueſt committis ignorant errour, not retourand juſtlie the ſpace of zeiris or termis be the quhilk the landis hes bene in non-entres ſen the deceis of the laſt heritabill poſſeſſour thairof; as gif thay deliver that the landis wer in the ſuperiour's handis be reſſoun foirſaid, be the ſpace of four zeiris, and thré monethis befoir the dait of the ſaid retour, and in veritie the laſt poſſeſſour died four zeiris and nyne monethis befoir the ſerving of the ſaid breve, and making of the ſaid retour, and ſwa the ſaidis perſounis defraudit the ſuperiour of ane term of non-entres, abone the four zeiris, of the ſaidis landis, quhilk term micht not be comprehendit in the ſaidis thré monethis. 28 *Junij*, 1555, *The Quene* contra Niniane Bannatyne, 1 *t. c.* 723.

C. XLII. The breve, and indorſatioun thairof, ſould be ſchawin to the defendar.

ANE Judge to quhom ane breve of inqueſt is direct, aucht and ſould, befoir the breve be put to the knawledge of ane inqueſt, ſchaw the ſamin, with the indorſatioun thairof, to the partie defendar, requirand and deſyrand inſpectioun of the ſamin; quhilk gif he refuſis to do, the ſervice of the breve, retour, ſaſine, and all that followis thairupon, is of nane avail. 20 *Jan.* 1494, James *Lord* Abernethie, *contra Schiref of* Edinburgh *on the ane part*, 1 *t. c.* 65.

C. XLIII. The writtis producit be the perſewar ſould be ſchawin to the defendar.

THE ſervice of ane breve of inqueſt, with the retour, ſaſine, and all that followis thairupon, is of nane avail, and ſould be reducit, gif the Judge refuſis to ſchaw the defendar the writtis or evidentis producit be the perſewar, for the verificatioun of his clame, he beand requirit be the defendar thairto. 17 *Aug.* 1507, *The King, and* Johne Elphingſtone, *contra the Schiref of* Edinburgh *and utheris*, 1 *t. c.* 263.

C. XLIV. Ane Judge beand diſchargit may not procede.

ANE retour, with all that followis thairupon, is null, and aucht and ſould be reducit, gif the Judge puttis the ſamin to the knawledge of ane inqueſt, he beand diſchargit of befoir, be the King's letteris, of his office in that part; or zit the ſamin is null, and ſould be

be retreitit and annullit, gif the Judge puttis ony perſoun upon the inqueſt for ſerving of the ſaid breve, quha is ſufficientlie provin, be his awin confeſſioun, grant, or utherways, to have gevin partial counſal aganis the partie defendar. 29 *Julij*, 1503. 8 *April.* 1502, William Dikſone *contra* Chriſtian Dikſone, 1 *t. c.* 125.

C. XLV. Of ane Judge refuſand to cloſe and ſeill the retour.

GIF the perſounis paſſand upon ane aſſiſe, for ſerving of ane breve of inqueſt, ſerve and deliver *affirmativè*, conform to the clame; and the Judge, or his deputis, befoir quhom the breve is ſervit, poſtponis and differis to cloſe the retour maid be the ſaidis perſounis, under his ſeill, he aucht and ſould content and pay to him that is retourit as air the maillis and dewties of the landis contenit in the retour, of all termis quhilkis he ſall happen to want in the ſaid Judge's default. 4 *Mart.* 1501, *ac* 1502, Edward Maxwell *contra the Schiref of* Wigtoun, 1 *t. c.* 124.

C. XLVI. The ſchiref's precept ſould be ſeillit, and the Clerk of court ſworn.

THE ſervice of ane breve of inqueſt, with the retour, ſaſine, and all that followis thairupon, aucht and ſould be reducit, gif the Schiref's precept, direct to the Officiar to proclame the breve, had nather proper ſeill, procurit ſeill, nor ſignet, efter the tenour of the act of parliament. *Item*, Gif the Clerk of the court for the time was not ſworn. *Item*, Gif the breve be not lauchfullie indorſit. *Ult. Feb.* 1515, James Colvile *contra* Johne Craufurd. *Pen. Julij*, 1503, James Dumbar *contra* Robert Innes *of* Invermarkie, 1 *t. c.* 126.

C. XLVII. A livand man has not ane air.

GIF ony man be ſervit narreſt and lauchful air be ane breve of inqueſt, to ony of his kinniſmen, or predeceſſouris as alreadie deceiſt, the ſervice, retour, and all that followis thairupon, is of nane avail, and may be reducit, gif efterwart it be ſufficientlie provin be the teſtimonial of the miniſter or reidar, and be divers witneſſis, that the ſaid perſoun was the time of the ſaid ſervice on life; *quia viventis nulla eſt hereditas.* 10 *Novemb.* 1501, *The King* contra *Sir* Johne Forreſtar *Chaiplan.* 20 *Mart.* 1506, *M.* Johne Pennicuik *contra* William Clerk, 1 *t. c.* 200.

C. XLVIII. He that is at the horn may not be ane air.

THE perſounis of inqueſt committis ignorant errour, retourand and deliverand the perſewar to be narreſt and lauchful air, conform to the clame, gif in veritie, the time of the ſervice of the breve, our ſoverane Lord's letteris wer judiciallie producit, and ſchawin to thame, beand dewlie execute and indorſate, quhairby the perſewar was denuncit rebel, and put to the horn, and as zit not relaxit thairfra; becauſe he beand at the horn, and ſwa civillie deid, had na perſoun to ſtand in judgment, nor zit to ask or deſyre to be ſervit air to his father, or to ony utheris his predeceſſouris. 1 *April.* 1558, *The King* contra Johne Lindſay *of* Covingtoun, 1 *t. c.* 757.

C. XLIX. Perſounis of inqueſt ſould not deliver anent ony punct of the breve, without the ſamin be ſufficientlie provin.

THE perſounis of inqueſt committis manifeſt and wilful errour, retourand and deliverand that he, to quhom the raiſer of the breve clamis him to be narreſt and lauchful air, died laſt veſt and ſaiſit in the landis, na inſtrument of ſaſine beand producit befoir thame the time of the ſervice of the breve. 10 *Julij*, 1543, *King* contra William Murray, 1 *t. c.* 590.

C. L. The landis ſould be retourit to juſt valour.

ANE retour, ſaiſine, and all that followis thairupon, is of nane avail, force nor effect, gif the perſounis that paſt upon the inqueſt for ſerving of the breve has not retourit the landis contenit in the breve to the juſt and zeirlie avail thairof, conform to the act of parliament. 22 *Octob.* 1489, *Erle* Bothwile *contra Erle of* Rothes, 1 *t. c.* 42. 12 *Aug.* 1501, *al.* 1502, *The King* contra *Laird of* Glenbervie. 13 *Feb.* 1499, *The King* contra Johne Craufurd. 12 *Maij*, 1540, *The King* contra *Mr.* Patrik Murray, 1 *t. c.* 122. *Ja.* III. *fol.* 58. *act.* 68. 9 *Maij*, 1474.

C. LI. Diſtinctioun ſould be maid betwix the new extent and the auld.

GIF the perſounis paſſand upon ane inqueſt, for ſerving of ony man to his landis, makis na diviſioun in the retour betwix the new and the auld extent, and ſchawis and declaris not the avail of the landis contenit in the breve and retour; the ſervice, retour, ſaſine, and all that followis thairupon, is of nane avail. *Pen. Jan.* 1492, Patrik *Erle* Bothwell *contra* James *Lord* Hamiltoun, *and the perſounis of inqueſt.* 24 *Feb.* 1492, William *Lord* St. Johne, *contra* William *Lord* Borthwik *and utheris*, 1 *t. c.* 82.

Item, The ſervice of ane breve of inqueſt, with the retour, and all that followis thairupon, is null, and ſould be reducit, gif the perſounis of inqueſt deliver and retour the landis to be in the time of peace, and ſiclike in the time of war, of the like avail, to wit, to be of als greit profſeit in the time of war as in the time of peace; and in lyk wayis, on the contrare, to give als mekle in the time of peace as in the time of war; becauſe thay ſwa retourand anſwer not directlie and cleirlie to the punct of the breve, quhat the landis ar worth in the time of peace, and in the time of war, nor zit makis ony diſtinctioun betwix the auld extent and the new extent, as thay aucht and ſould do of the law and conſuetude of this realme, 5 *Feb.* 1499, James Dunbar *of* Cumnok *contra* Johne *Lord* Catheart. And it is to wit, concerning the difference betwix the auld extent and the new extent, that generallie ane merk of auld extent ſould be eſtemit to ane pund of new extent. *Ult. April.* 1500, *The King* contra Robert Maitland *and utheris*, 1 *t. c.* 181.

C. LII. The new extent ſould be greiter nor the auld.

THE ſervice of ane breve of inqueſt is of nane avail, and the perſounis of inqueſt may be convict for ignorant errour, gif thay deliver and retour the new extent of the landis, to wit, the valour of the ſamin, in time of peace, to be leſs nor the auld extent of the ſamin, *viz.* the valour of the landis the time of war; becauſe the new extent ſould be heichar, and greater, nor the auld extent. 10 *Mart.* 1504, *Erle* Lennox *contra Schiref of* Air, 1 *t. c.* 215.

C. LIII. Anent the valour of landis that payis victual.

GIF ony man raiſis ane breve to be ſervit air to ony landis that payis ferm victual, pultrie, greſſum, the perſounis of inqueſt may not be compellit to tak inquiſitioun of the ſaid zeirlie rental, nor zit to retour and reduce the ſaid victual, pultrie, greſſum, and utheris dewties, to ane certane ſowme of money, in reſpect that the prices of victual, and pultrie, is ſa uncertane and changeabill, that na ſure and certane price may be maid thairon. 17 *Julij*, 1562, *Quenis Advocat and Lord* Drummond *contra* George Muſchet, 2 *t. c.* 285.

C. LIV. Perſounis of inqueſt ſould

THE perſounis of inqueſt committis etrour, gif thay retour the landis

landis to be in the handis of the ſuperiour thairof, and retour not be quhom thay cum in his handis, or be quhais deceis, reſignatioun, dimiſſioun, or renunciatioun; becauſe thair ſwa retourand anſweris not to the punctis of the breve. 20 *Mart.* 1526, Walter Gourlay *contra* John Gourlay, 1 *t. c.* 286.

declare how the landis ar fallin in non-entres.

C. LV. The perſounis of inqueſt ſould retour the landis to pertene to the richt ſuperiour thairof.

THE ſervice of ane breve of inqueſt, with the retour, ſaſine, and all that followis thairupon, is of nane avail, and may be reducit, gif the perſounis of inqueſt retour the landis to be haldin of ane ſuperiour, thay beand of veritie haldin of ane uther overlord. 24 *Jan.* 1502, *King's Majeſtie* contra *Sir* Johne Somerville *of* Cambuſnethane, 1 *t. c.* 130.

C. LVI. Anent retouring of landis haldin of the King as Stewart of *Scotland.*

THE ſervice of the breve, with the ſaſine and all that followis thairupon, is of nane avail, and may be reducit, gif the perſounis of inqueſt ſerve and retour the landis haldin of the King *ſimpliciter*, thay beand haldin of his Grace as Stewart of *Scotland.* 12 *Aug.* 1511, Johne *Lord* Sempil *contra Lord* Levingſtoun, 1 *t. c.* 169.

C. LVII. Of ane ſuperiour deceiſſand efter the raiſing of the breve.

ANE breve of inqueſt beand raiſit be ony man, gif it happinis his ſuperiour, of quhom he haldis the landis contenit in the breve, to deceis, efter the raiſing of the ſamin, and befoir the ſerving thairof, he aucht and ſould rais ane uther breve of new: And gif the Judge proceid to the ſerving of the foirſaid breve firſt raiſit, the ſervice thairof, with the retour, ſaſine, and all that followis thairupon, is of nane avail, force nor effect. *Pen. Jan.* 1508, *Lord* Seytoun *contra* Stewart *of* Craigiehall, 1 *t. c.* 274.

C. LVIII. Diſtinctioun ſould be maid in the retour betwix the time of ward, and the time of non-entres.

THE perſounis of inqueſt committis ignorant errour, gif thay retour and deliver that the landis ar in the ſuperiour's handis, be reſſoun of ward and non-entres, be the ſpace of certane termis and zeiris, and makis not ſpecial diſtinctioun betwix the time or zeiris in the quhilk thay wer in his handis, be reſſoun of non-entres, and the time or zeiris in the quhilk thay wer in his handis be reſſoun of ward. 18 *Feb.* 1540, 1 *t. c.* 517.

C. LIX. Anent retouring of landis haldin of ſindrie ſuperiouris.

THE perſounis of inqueſt committis ignorant errour, retourand and deliverand the landis to have bene ane certane ſpace, be reſſoun of non-entres, in the handis of the ſuperiour; it beand of veritie, that thay wer in the handis of twa or thré ſuperiouris, ilk ane efter utheris deceis, be the ſaid ſpace, be reſſoun of non-entres; becauſe thay ſould ſpeciallie declair in the retour, how lang, and quhat ſpace thay wer in the handis of ilk ane of the ſaidis ſuperiouris, and how lang thay wer in the handis of the father, laſt ſuperiour thairof; and how lang, efter his deceis, thay pertenit to his ſone, in like maner ſuperiour thairof. 14 *Decemb.* 1554, *Quenis Advocat* contra James Gordoun *of* Barnbarroch, 1 *t. c.* 1003.

C. LX. The perſounis of inqueſt ſould declare in the retour how the landis ar in the ſu-

THE perſounis paſſand upon the ſervice of ane breve of inqueſt, committis manifeſt and wilful errour, deliverand and retourand that the landis wer in the ſuperiour's handis, in default of the narreſt air not perſewand his richt of the ſamin, gif of veritie the ſaidis landis wer in his handis, in default of the lauchful age of the richteous air,

periour's handis. air, and zit, notwithſtanding the ſamin, thay ſerve him as narreſt air thairto, he beand of les age, and na chartour of blanche ferm, nor few ferm, ſchawin and producit befoir thame. 28 *Julij*, 1529, *The King* contra Johne Colquhoun, 1 *t. c.* 312.

C. LXI. Of the air of him to quhom ony diſpoſitioun is maid that cumis under the King's revocatioun.

GIF the King gevis and diſponis to ony man heritabillie ony landis, office, or ony uther thing, pertening to him as ane part of the patrimonie of his crown, within the time of his les age, the quhilk thairefter cumis under his general revocatioun, and his air, quha is infeft in maner foirſaid, raiſis ane breve to be ſervit as narreſt and lauchful air to him; the perſounis of inqueſt ſervand and retour and him *affirmativè*, conform to his clame, committis manifeſt and wilful errour, gif in the time of the ſerving of the ſaid breve it was alledgit and objectit befoir thame that the ſaid infeftment, and ſaſine following thairupon, was null in the ſelf, and of nane avail, and came under the general revocatioun, as ſaid is. 14 *Junij*, 1562, *The Quene* contra *S.* James Hamiltoun, 1 *t. c.* 1013.

C. LXII The perſounis of inqueſt ſould not retour the landis to be haldin in blanche.

GIF the perſounis that paſt upon ane aſſiſe, for ſerving of ane breve of inqueſt, deliverit and retourit the landis contenit in the breve, to be haldin of the ſuperiour in blanche ferm, na ſufficient documentis or evidentis beand ſchawin befoir thame thairupon, thay incur and commit manifeſt and wilful errour. 7 *Novemb.* 1502, *The King's Advocat* contra Elizabeth Lyne. 2 *Mart.* 1542. *Ult. Julij*, 1542, 1 *t. c.* 119. *prima pars.*

C. LXIII. Of ward landis retourit to be haldin in blanche.

THE perſounis of inqueſt may be convict of wilful errour, gif thay retour the landis to be haldin in blanche ferm, thay beand of veritie haldin be ſervice of ward and relief: And ſiclike, thay may be convict of wilful errour, gif thay retour that ony perſoun died laſt veſt and ſaiſit in ony landis, na inſtrumentis or documentis beand ſchawin to thame, be the quhilk it micht have bene knawin that he was veſt and ſaiſit thairin. 3 *April.* 1527, Quintene Schaw *contra* Ninian Rankin. 12 *Decemb.* 1526, Helen Betie *contra* Johne Balbirnie. 13 *Decemb.* 1526, *The King* contra *Erle of* Caſſilis. 16 *Mart.* 1529. 1 *Decemb.* 1531, 1 *t. c.* 119. *poſterior pars.*

C. LXIV. Of blanche landis retourit to be haldin be ſervice of ward and releif.

THE perſounis of inqueſt paſſand upon ane aſſiſe, for ſervice of ane breve of inqueſt, committis manifeſt and wilful errour, retourand the landis to be haldin be ſervice of ward and relief, the ſamin beand of veritie haldin in blanche ferm, without ony retour, or ony uther ſufficient probatioun thairof, ſchawin and producit befoir thame the time of the ſervice, 4 *Junij*, 1532, *The King* contra William Fleming, 1 *t. c.* 410. The perſounis of inqueſt committis ignorant errour, retourand the landis to be haldin be ſervice of blanche ferm, gif of veritie thair was na chartour of blanche ferm ſchawin nor producit befoir thame the time of the ſervice of the breve; notwithſtanding that thair was ane retour of blanche producit befoir thame the ſamin time. 15 *Junij*, 1543, 1 *t. c.* 587.

C. LXV. Of landis retourit to be haldin in few-

THE perſounis of inqueſt paſſand upon ane aſſiſe, for ſervice of ane breve of inqueſt, committis errour, retourand all and haill the landis to be haldin in few ferm, it beand of veritie that the thrid

thrid, or ony part thairof, is haldin be ſervice of ward and relief; and thairfoir the haill retour, with all that followis thairupon, is of nane avail, and may be reducit. 15 *Jan.* 1532, *The King* contra Laurence *Lord* Oliphant, 1 *t. c.* 411. ferm, quhairof ane part is haldin in ward.

ITEM, Gif ane inqueſt happinis to ſerve ony perſoun as air to ony landis unite and annexit to uther landis, na chartour or infeftment of unioun ſchawin to thame the time of the ſervice; the retour, ſervice, and all that followis thairupon, is of nane avail; becauſe all unioun and annexatioun of landis is hurtful and prejudicial to the King, and thairfoir ſould on na wayis be admittit, except the ſamin be cleirlie and ſufficientlie provin be writ. 14 *Mart.* 1488, Alexander Stratoun *contra Schiref of* Edinburgh, 1 *t. c.* 60. *poſterior pars.* C. LXVI. Anent landis unite and annexit to uther landis.

THE perſounis paſſand upon the ſervice of ane breve of inqueſt commit manifeſt and wilful errour, gif thay retour and deliver ony landis to be pertinentis and tenandries of uther landis, the quhilk lyis ſeverallie and diſcontigue fra utheris, without ony annexatioun or incorporatioun ſchawin and producit befoir thame, for proving that the ane is principal, and the uther is pertinent or tenandrie. 20 *Feb.* 1539, *The King* contra Patrik Dumbar *of* Kilconquhar, 1 *t. c.* 503. C. LXVII. Of landis be- and pertinentis of uther landis.

Breve of idiotrie.

AT the deſire of ony partie havand interes, the breve of idiotrie may be direct furth of our ſoverane Lord's chancellarie, to the Schiref, and his deputis, chargeing thame, that thay be gude and leill men of the countrey, be quhom the veritie may beſt be knawin, beand ſworn be thair greit aith, cauſe diligent and leill inquiſitioun be takin, gif ſic ane man is impotent of judgment, fool, and natural idiot, ſwa that is fearit that he annalzie his landis, and utheris immovabill gudis, and how lang he has bene fuliſh; and gif it be ſwa, quha is his narreſt kinniſman of his father's ſide; and gif the ſaid kinniſman can reul and govern his awin landis and gudis, and may find ſufficient cautioun for lauchful adminiſtratioun of landis and gudis pertening to utheris; and gif he be of lauchful age; and quhat happinis to be found be the ſaid inqueſt, that the Schiref retour the ſamin to the King's chapel, ſeillit with his ſeill, and the ſeillis of the perſounis of inqueſt. *Pag.* 515. *in meo albo libro.* C. LXVIII. The raiſing and form of the breve of idiotrie.

THE breve of idiotrie aucht and ſould be raiſit and impetrat furth of our ſoverane Lord's chancellarie, be the narreſt freindis, ſum of the father's ſide, and ſum of the mother's ſide, and ſpeciallie be thame quha ar narreſt and lauchful airis to the alledgit idiot; and the ſamin may be ſervit befoir the Schiref of the ſchire, or befoir ony uther Schiref in that part, ſpeciallie conſtitute be the Lordis of counſal to that effect, and quha ſall, the time of the conſtitutioun be the Lordis of counſal, ſweir, and mak faith, that he ſall leillelie and trewlie miniſter and do juſtice in his office. 17 *Feb.* 1523, Patrik Hepburn *contra* Johne Hepburn, 1 *t. c.* 401. C. LXIX. Of him quha may raiſe the breve, and of the Judge.

C. LXX. Of ane proceſs of idiotrie led aganis ane beand at the King's horn.

ANE inqueſt beand ſummoundit upon ane breve of idiotrie, for declaratioun of ane perſoun to be idiot, gif the ſaid perſoun, the time of the ſerving of the ſaid breve, be at the King's horn, and not obedient to his Hienes, nor under his lawis, the ſaid breve and proceſs is in the ſelf null and of nane avail, force nor effect. 28 *Maij*, 1470, *Laird of* Lethingtoun *contra the inqueſt*, 1 *t. c.* 6.

C. LXXI. BREVE of idiotrie, or furioſitie, ſould contene ane declaratioun of the nullitie of all thingis done be the foole, or furious perſoun, fra the beginning of his furie or follie. *Ja.* III. *fol.* 61. *act.* 82. 20 *Novemb.* 1475.

C. LXXII. The Judge in the breve of idiotrie.

ANE breve of idiotrie of our ſoverane Lord's chapel beand raiſit and impetrat be the ſone aganis the father, or be quhatſumever perſoun or perſounis, aucht and ſould be ſervit befoir the Schiref, or his deputis, of the ſchirefdome quhair the perſoun aganis quhom the breve is raiſit dwellis, or his landis lyis, or in like maner befoir ony uther Judge ordinar, within quhais juriſdictioun the defendar his landis or gudis lyis. 9 *Julij*, 1498, Patrik Blacader *contra the Schiref of* Peblis, 1 *t. c.* 100.

Breve of perambulatioun.

C. LXXIII. Breve of perambulation.

AT the inſtance and deſire of ony partie that thinkis him hurt in the marchis of his landis, the breve of perambulatioun ſould be direct furth of our ſoverane Lord's chancellarie to the Juſtice-general and his deputis, chargeand and commandand thame that thay be gude, leill, and the eldeſt of the countrey, cauſe juſtlie be ane aſſiſe of the landis, perambulat the richt meithis, marchis, and diviſis, betwix ſic landis pertening to ſic ane man on the ane part, and ſic landis pertening to ſic ane uther man on the uther part, lyand within ſic ane baronie, and ſic ane ſchirefdome; and as the ſaidis meithis and marchis ſall be juſtlie, be the ſaid aſſiſe, perambulat, that thay cauſe the ſamin be kept ſurelie, and obſervit in all time cuming thairefter. *Collas.*

C. LXXIV. The Juſtice's precept direct to the Schiref.

EFTER that the ſaid Juſtice has reſſavit the ſaid breve of perambulation, he ſould direct his precept conform thairto, to the Schiref, and his deputis, within quhais juriſdictioun the landis contenit in the breve lyis, chargeand and commandand thame to ſummound lauchfullie the parties at the principal meſſuage of the ſaidis landis, to compeir befoir the Juſtice or his deputis, ane or ma, ſic ane day, upon the ground of the ſaidis landis, to do and underly that quhilk thay in this part ſould do of the law; and alſwa to premoniſh and ſummound all and ſindrie frehalderis within his ſchirefdome, quha haldis immediatlie of our ſoverane Lord in cheif, to compeir the ſaidis day and place, to do that quhilk effeiris and becumis thame to do of the law; and mairover, that the ſaid Schiref, and his deputis, be alſwa preſent at the ſamin day, bringand with thame ſufficient teſtimonie and witneſſis of the execution of the Juſtice's precept direct to thame. *Iter juſticiar. c.* 7.

EF-

C. LXXV. The Schiref's precept direct to the Serjand.

EFTER that the Schiref has reſſavit the Juſtice's precept beforementionat, he ſall direct his precept and ſummoundis to ony of his Serjandis of his ſchirefdome, chargeand and commandand him to ſummound lauchfullie baith the parties at the principal meſſuage of the landis contenit in the breve, to compeir befoir the Juſtice, or his deputis, ane or ma, upon the ground of the ſaid landis, fic ane day, and ſic ane place, to heir and ſé the ground of ſaidis landis contenit in the Juſtice's precept, to be juſtlie perambulat, and to do juſtlie thairanent all that thay aucht to do of law: And mairover, that he premoniſh and ſummound all and ſindrie the ſaidis frehalderis within the ſchirefdome, quha haldis immediatlie of our ſoverane Lord in cheif, to compeir the ſamin day and place befoir the Juſtice and his deputis, to paſs upon the aſſiſe in the ſamin perambulatioun, and to do thairanent all that thay aucht to do of the law: And alſwa, that the ſaid Serjand be there preſent, or charge ony of the Schiref-deputis to compeir at the ſamin day and place, bringand with thame the Schiref's precept, and ſufficient witneſſis of the executioun thairof; and this ſummoundis ſould be execute at the chemiſe of baith the ſaidis landis that ar debaitabill and in pley, upon fourtie dayis warning. *Proceſs of perambulatioun.*

C. LXXVI. The Schiref may be Judge in cauſis of perambulatioun.

FOR perambulatioun of richt meithis and marchis of ony landis, ony partie havand interes thairintill may raiſe and purchaſe letteris of the Lordis of ſeſſioun, direct to the Schiref of the ſchire quhair the landis lyis; for the Schiref and his deputis ar Judges competent in cauſis of perambulatioun, gif ather of the parties pleiſis to perſew befoir him, albeit it be objectit that thay ar not Judges competent thairto, bot the Juſtice-general and his deputis allanerlie. 9 *Julij*, 1533. 9 *Mart.* 1533, *Lord* Invermeith *contra* William Wod *of* Bonytoun, 1 *t. c.* 427.

C. LXXVII. Lordis of ſeſſioun ar Judges to the reductioun of cauſis of perambulatioun.

THE Lordis of counſall and ſeſſioun may diſcharge the Juſtice-general, and his deputis, fra all proceeding or taking of cognitioun of brevis, or proceſſis of perambulatioun: And in like maner, thay ar Judges competent to the reductioun of all proceſſis and decretis of perambulatioun, led, deducit, and gevin befoir the Juſtice-general and his deputis, 20 *Junij*, 1543. *Item*, Thay may continue the principal ſummoundis of reductioun, and charge the perſounis that wer upon the inqueſt of perambulation, to compeir befoir thame, to anſwer *ſuper inquirendis*, under the pane of rebellioun. 24 *Junij*, 1558, *Sir* Walter Ogilvie *of* Banf *contra Lord* Saltoun. 21 *Aug.* 1533, 1 *t. c.* 588.

C. LXXVIII. The parties ſould cum in ſober maner to the court of perambulatioun.

BREVIS of perambulatioun beand raiſit betwix twa parties, for perambulatioun of the richt meithis and merchis of landis pertening to thame, and ather of the parties invadis or boiſtis the uther at the day of compeirance, the Lordis of counſal may diſcharge baith the parties of ony convocatioun of thair kin, freindis, and partakeris, and charge thame to cum to the court with ane ſober nombre of thair freindis, ſwa that the Juſtice may proceid and do juſtice in the mater, but ony feir, troubil or impediment: And mairover, thay may ordane the Judge to tak ſovertie of lawborrowis of baith the faidis parties, at thair cuming to the ground at the day prefixed be the

Judge

Judge thairto, under ſic pane as the Lordis ſall modifie, to be payit be the partie offendar to the partie offendit. 24 *Julij*, 1565, *Laird of* Banf *contra Laird of* Boyne, 1 *t. c.* 840.

C. LXXIX. The form of ane court of perambulatioun.

EFTER the Schiref, his deputis, or Serjandis, has put the foirſaid ſummoundis and precept to executioun, and the day of compeirance is cum to the quhilk the parties wer ſummoundit, the Juſtice-general, or his deputis, ſould cum to the ground of the landis debaitabill at court time of day, and fence ane Juſtice-court, thairefter reid the breve, and the Schiref's precept of ſummoundis, and the record and indorſatioun thairof maid be the Serjand, and ſyne call the parties to heir and ſé ane aſſiſe choſin, admittit and ſworn, to perambulat the landis, and put the breve to dew executioun. And quhidder the partie, beand callit, compeir or not, the Serjand ſould preive the indorſatioun and executioun of the ſummoundis, with thré witneſſis at the leiſt: And efter that the ſummoundis is provin dewlie execute, the Juſtice, or his deputis, ſould ſpeir and ask at baith the parties gif thay, or ony of thame, has ocht to ſay quhy the breve ſould not be put to ane aſſiſe: And gif thay alledge ony reſſoun thairfoir, he ſould heir the ſamin: And gif nathing be objectit be thame to ſtop the breve, he ſould chooſe the aſſiſe, and cauſe thame paſs furth and viſie the ſaidis landis, and ſet in proppis and merchis as thay ſall think reſſonabill, and thairupon mak thair record and decrete under thair ſeillis, and the Juſtice's ſeill.

Item, It is to wit, that the brevis of perambulatioun ar ſumtime raiſit with conſent of baith the parties, and then few exceptiounis ar proponit bot aganis the perſounis quha ar ſuſpect to paſs upon the aſſiſe; and ſumtime thay ar raiſit at the inſtance and deſire of ane partie aganis the will of the uther, and then many exceptiounis uſis to be proponit be the partie defendar, to ſtop the proceſs and ſervice of the breve; for in the firſt, he may conſider the Judge, and luke gif thair be ony exceptioun aganis him, the quhilk gif he findis, he may propone and alledge the ſamin: And gif he findis na exceptioun aganis him, he ſould conſider the reſt of the memberis of the court, *viz.* the Schiref, or his depute, that compeiris, the Serjand, the Clerk, and the Dempſtar, and ſé gif ony of thame be ſuſpect, or may be removit be ony exceptioun that may be proponit aganis the Judge; for all the ſamin exceptiounis may be proponit aganis the Clerk, the Schiref-depute or dempſtar, that may be alledgit aganis the Judge: And mairover, gif ther be nather Schiref, nor Schiref-depute, to ſerve in the court, the proceſs is of nane avail, and may be annullit.

Item, Gif thair be na exceptioun aganis the Judge, Schiref, or his deputis, Clerk of court, nor Dempſtar, then the defendar may deſire the breve and ſummoundis to be red and conſiderit, the quhilk ſould be maid at the chemiſe of the landis that ſould be perambulat, and not at the dwelling-place, bot gif the partie dwell at the chemiſe, and alſwa baith the parties, the perſewar als weill as the defendar.

Mairover, this ordour ſould be kept in the making of the ſummoundis, *viz.* be the Juſtice's precept direct to the Schiref, and execute be the Schiref, or be the Schiref-depute, or be the Schiref's precept direct to the Serjand: And gif the Serjand be executer thair-

thairof, he ſall have in court the Juſtice's precept, and Schiref's precept, with ſufficient witneſſis, to preive the executioun thairof; for gif ony of thir punctis failzie, the ſervice of the breve ſall ceis, and have na proceſs.

Item, Gif thair be na exceptioun fund aganis the ſummoundis, the partie may conſider gif thair be ony perſoun quha is not ſummoundit, and has interes to the landis that ſould be perambulat, a-ther be propertie or commountie, frank-tenement or lyfrent; for and thay be not ſpecifyit in the breve, in the ſummoundis, and in the indorſatioun thairof, the ſamin ſould ceiſs, and have na proceſs.

Item, Gif the breve be razit or interlynit in ony place, or wantis ocht of the commoun form, the ſamin is of nane avail.

Item, Gif thair be na fault fund in the ſummoundis, or breve, then the parties man enter in pley; and firſt, the defendar may oppone aganis the perſewar, and deſire him to ſchaw quhat interes he has to the landis: And gif he alledge the ſamin to pertene to him in heritage, he ſould inſtantlie ſchaw the ſamin; gif he has not at the leiſt his ſaſine preſent to ſchaw, the breve ſould ceiſs quhill he ſchaw the ſamin: And gif the defendar may find or eſpy ony fault in the perſewar's ſaſine, richt or titill producit be him, he may except and oppone aganis the ſamin.

Item, All perſounis havand interes, beand lauchfullie ſummoundit, and the perſewar's titill ſchawin and producit, then ſould be choſin ane aſſiſe of lauchful and unſuſpect perſounis, to perambulat the richt meithis and merchis of the landis; at the quhilk time it is leaſum to the partie to uſe all his lauchful exceptiounis aganis the perſounis of the aſſiſe, in the ſamin maner as he micht do aganis the Judge; becauſe all exceptiounis quhilk may of the law be proponit aganis the Judge, the ſamin may be proponit and have place aganis the perſounis of inqueſt.

Item, Quhen the aſſiſe is choſin, admittit, and ſworn, the perſewar ſould produce his clame: And gif he thairin clamis and alledgis that the merchis of the landis ſould paſs fra ſic ane place, to ſic ane place, or fra ſic ane bray or rod, or gait, to ſic ane burn; then, gif thair be producit ony boundand chartour, for verificatioun of the ſaidis merchis, the defendar ſall anſwer, that the perſewar namis the boundis wrang, and ſall ſay that the ſaidis ſyke, bray, rod, gait, or burn, ar in uther places, and not quhair the perſewar alledgis thame, and has bene well kend in the countrey be commoun uſe, voce, and fame: And gif the perſewar produce na boundand chartour, bot alledgis allanerlie the meithis and merchis to be in ſic places, the defendar may alledge that thay ar in uther places, and that he has bene in continual poſſeſſioun of thay landis be thay merchis, and ſwa thay ar, and ay has bene, and ſould be, be richt and reſſoun, and thairupon he referris him to the aſſiſe.

C. LXXX. Of uther reſſounis and cauſis to ſtop perambulatioun.

GIF the ſummoundis be not lauchfullie maid and execute the day of the perambulatioun, the ſamin ſould not hald.

Item, Gif the ſamin landis contenit in the breve and ſummoundis wer perambulat of befoir betwix the ſamin parties, thay may not of new be perambulat agane, except the King's Grace be ane of the parties; for he may deſire landis pertening to him to be perambulat agane, albeit the ſamin wer provin to be perambulat of befoir.

Item, Gif the diviſis, meithis and merchis ar not namit and expremit in the ſummoundis, and letteris of perambulatioun, the proteſs is of nane avail.

Item, Gif thair be not ane ſufficient nombre of lauchful men to paſs upon the aſſiſe of perambulatioun, the ſamin ſould not proceid.

Item, Gif thair be na competent Judge, the perambulatioun ſould ceis.

Item, Gif the landis be not namit be the richt name in the breve, ſummoundis or clame, the proceſs ſould ceis.

Item, The proceſs of perambulatioun ſould be ſtoppit, ſtayit, and delayit, induring the time of publique proclamatioun of ony commoun hoiſt movit within the realme.

Item, The King's prohibitioun and diſcharge maid and gevin for certane cauſis, lettis and ſtoppis the proceſs of perambulatioun.

Item, Gif he aganis quhom the perambulatioun is intentit is of leſs age, the ſamin ſould ceis, and be continuit, *Lib.* 4. *c.* 24. *Aſſiſ. Reg. David. c.* 46. Becauſe, gif the landis that ſould be perambulat pertenis to him in propertie or tenandrie, the breve and proceſs of perambulatioun ſould ceis, and be continuit, until he be of lauchful age. 25 *Aug.* 1533, William Wod *of* Bonytoun *contra* Johne *Lord* Invermeith, 1 *t. c.* 436.

C. LXXXI. Ane bound-and chartour ſtoppis perambulatioun.

ITEM, Gif the King has gevin ony landis of his domain, at his awin will, merchit and meithit be trew and leill men of the countrey, choſin and ſworn thairto, or zit with certane meithis and merchis boundit and limit in the infeftment, he to quhom the ſamin is gevin ſall bruik and joiſe peciabillie and quietlie in all time to cum the ſaidis landis, be thair ſaid boundit meithis and merchis, ſwa that the ſamin landis, nor na part thairof, may be clamit nor evictit fra him be the breve of perambulatioun, or ony uther breve, be way of actioun, concerning the ground richt or propertie thairof. *Quon. attach. c.* 62. *Aſſiſ. Reg. David. c.* 36. *Stat. Will. c.* 6.

C. LXXXII. Anent the maillis of the debaitabill landis.

LANDIS, meithis and merchis, ſtandand under perambulatioun amangis partis, the maillis, fermis and dewties thairof, ſould remane in the tenentis or laſt poſſeſſouris handis thairof: And in like maner, gif ony of the parties happinis to poind ony gudis beand upon the ſaidis debaitabill landis, the ſamin aucht to be reſtorit to the ground, quhill it be declarit be perambulatioun, and be the law, quhom to thay appertene, without ony prejudice of ony of the parties in the mene time. 19 *Jan.* 1479, *Baillies of* Aberdene *contra* Andro Wod, 1 *t. c.* 24.

C. LXXXII. Dependance of perambulatioun ſtoppis intenting of cognitioun.

BREVIS of perambulatioun beand raiſit and proclamit, tuichand the richt meithis and merchis of landis pertening to twa or ma perſounis, na letteris or ſummoundis of cognitioun may be raiſit be ather of the ſaidis parties concerning the ſamin landis, induring the time of the dependance of the ſaid breve: And gif it happinis ony to be raiſit, the ſamin aucht and ſould be ſuſpendit and diſchargit. 9 *Novemb.* 1532, *Laird of* Elphingſtoun *contra Lord* Methven, *and utheris*, 1 *t. c.* 477.

ANENT

ANENT the chooſing of inqueſtis in cauſis of perambulatioun. *Ja.* VI. *fol.* 12. *act.* 13. 20 *Octob.* 1579. C. LXXXIV.

ALL landis, quhairever thay be,
In Scotland's *partis, has merchis thré;*
Heid-roume, water, and monthis bord,
As eldren men has maid record.
Heid-roume is to the hill direct,
Fra the haugh callit in effect.
Betwix twa gleunis ane monthis bord
Divydis thay twa glennis; I ſtand for it.
Water cumand fra ane glen heid,
Divydis that glen, and ſtanchis feid.
Thortron burnis in monthis hie
Sall ſtop na heid roume, thoch thay be.
Ane bord brokin in dennis deep
Sall hald the lyne, and plumming keip. C. LXXXV. Certane reulis concerning merchis of landis.

Of the breve of lyné, or lineatioun.

THE breve of perambulatioun may be raiſit for perambulating of landis lyand without burgh; and the breve of lyne may be impetrat, and has place, for lineatioun of burrow-landis and tenementis. *Quat. mod. ten. cur. c.* 3. *Reg. David. in fin.* C. LXXXVI. The breve of line has place within burgh.

AT the inſtance and deſire of ony partie or burges that thinkis him hurt in the merchis of his landis or tenementis, the breve of lyne ſould be direct furth of our ſoverane Lord's chancellarie, to the Proveſt or Baillies of the burgh quhair the landis or tenementis lyis, chargeand and commandand thame, that, be the beſt and maiſt faithful burgeſſis of the burgh ſworn thairto, thay cauſe ſic landis, pertening to ſic ane man on the ane part, and ſic landis, pertening to ſic ane uther man, on the uther part, baith lyand within the ſaid burgh, to be juſtlie, conform to the law of burgh, and efter the richt and auld diviſis within burgh, lynit: And as the ſaidis lynaris dois lyne the ſaidis diviſis, that in all time thairefter thay cauſe the ſamin be ſurelie kept and obſervit. *Quon. attach. c.* 75. C. LXXXVII. The breve of line, and Judge thairintill.

THE Proveſt, with counſal of the communitie, ſould chooſe lynaris within the burgh, at the leiſt four wiſe and diſcrete men, burgeſſis of the burgh, ſwa that for fault of lyning of landis thair cum na complaintis to the King's chalmerlane airis: And gif ony ſic complaintis beis hard, the Proveſt, Baillies, and alſwa the lynaris, ſall be in ane unlaw.

Item, The ſaidis lynaris ſall ſweir ane aith, that thay ſall faithfullie lyne all the ſaidis burrow-landis, als weill in lenth as in breid, efter the richt diviſis of burgh, and ſall lyne firſt the fore-part, and efter the bak-ſide of all the ſaidis tenementis and landis. *Leg. burg. c.* 100. C. LXXXVII. The election and aith of lynaris within burgh.

GIF in preſence of baith the parties ony landis beis lynit be the Baillies, or leill men of the burgh, and the merchis ſet and propit, C. LXXXIX. Landis beand anis lynit, may not be lynit agane.

pit, and ſwa bruikit and joiſit be the ſpace of zeir and day, the ſamin landis ſall not in ony time thairefter be lynit agane: And gif ony of the ſaid merchis beis removit, the Baillie is haldin to do juſtice to the partie complenand thairanent. *Leg. burg. c.* 146. *Stat. Will. c.* 20. *De judic. c.* 40.

C. XC. The meſour of a rude of land.

THE rude of land within burgh ſould contene twentie ane fute, and the rude of land without burgh, ſould contene the meſour of ſax elnis, the quhilk makis auchtene fute of indifferent quantitie, that is, not of the maiſt, nor zit of the leiſt. *Leg. burg. c.* 140.

Breve of diviſioun.

C. XCI. Of the raiſing of the breve.

GIF ony portioneris of landis havand and occupyand the ſamin in thrid partis, feird partis, ſaxt partis, aucht partis, and ſwa furth, and ony contentioun ariſe betwix thame, ony of the parties quha thinkis himſelf hurt and skaithit in the occupatioun, labouring, and manuring of his part, may paſs to the chancellarie, and raiſe ane breve of diviſioun, direct to the Schiref, for taking of cognitioun in the ſaid mater, efter the form and ordour of the chancellarie: And the Schiref, or ony uther Judge, chargit be the Lordis letteris, is not Judge competent to the diviſioun of landis, or to ken ony man to his part thairof; becauſe the ſamin cannot be done without ane breve of diviſioun direct furth of the chancellarie in dew form. 23 *Feb.* 1491, Johne Troup *contra* John Leſlie. 16 *Mart.* 1533. 1 *t. c.* 80.

C. XCII. Landis may not be dividit without ane breve.

ALL diviſioun of landis maid betwix ony portioneris, to ken ilk ane of thame to thair awin partis, is of nane avail, gif the ſamin be without ane breve of diviſioun direct furth of the chancellarie in dew form. 16 *Mart.* 1533, *Mr.* William Broun *of* Coilſtoun *contra* Patrik Hepburn *Maiſter of* Haillis, 1 *t. c.* 454.

C. XCIII. The executioun of the breve.

THE breve of diviſioun beand purchaſit furth of our ſoverane Lord's chancellarie, and preſentit to the Schiref, or his deputis, the Schiref ſould incontinent direct his precept to his Serjand, chargeand him to paſs, and, befoir ſufficient witneſſis, warn all the parties perſonallie, gif thay can be apprehendit, and, failzieing thairof, at thair dwelling-places, and all utheris havand interes, be opin proclamatioun of the breve, at the mercat-cros of the heidburgh of the ſchirefdome quhair the landis lyis, upon the mercat-day thairof, and upon the premonitioun of fiftene dayis, to compeir upon the ground of the landis contenit in the breve, to heir and ſé the ſaid breve lauchfullie ſervit, and the diviſioun led, maid, and deducit, and to mak intimatioun heirof to thame, as effeiris. Attour, that thay in like maner ſummound lauchfullie ane ſufficient nombre of the eldeſt men, quha beſt knawis the veritie, leiſt ſuſpect, and of the ſaid ſchirefdome, to compeir the ſaidis day and place, and paſs upon the inqueſt for ſerving of the ſaid breve, ilk perſoun under the pane of ane unlaw. *Form of the breve of diviſioun, p.* 820.

C. XCIV. Of the clame.

THE breve of diviſioun requiris not neceſſarlie ane ſpecial clame, as

as ſould be in the breve of inqueſt; and thairfoir the general clauſe thairof, *cum pertinentiis*, comprehendis houſis, biggingis, muris, moſſis, woddis, medowis, milnis, the quhilk, all and ſindrie, ſould be dividit, albeit thay be not ſpeciallie expremit in the clame or breve. 2 *Junij*, 1540, 2 *t. c.* 28.

C. XCV. The aſſiſe and maner of diviſioun.

THE aſſiſe beand electit, admittit, and ſworn upon the breve of diviſioun, ſould paſs and viſie the haill landis quhilk ſould be dividit; and beand ryplie avyſit, ſould met and meſour the ſamin, and part and divide thame in certane partis, *viz.* in twa, or thré, or ma partis, effeirand to the nombre of the portioneris of the landis, and ſould ſpeciallie name and expreme ilk part be thair awin name, with thair particular and proper meithis and merchis: And efter the inqueſt has partit and dividit the ſaidis landis, the Clerk of the court ſould put the ſamin in form of ane rolment and decrete of the ſaid inqueſt, and cauſe the ſamin be ſeillit with the ſeillis of the perſounis of inqueſt, togidder with the Schiref's ſeill; and thairefter the ſaid Schiref ſould cauſe the ſaidis perſounis to caſt cavellis upon the ſaidis partis; the quhilk he or his deputis may do in the ſamin court quhairin the landis wer divydit, or utherwayis, he havand ony reſſonabill cauſe, may do the ſamin thairefter in ane uther court, ſenſit and ſet be him to that effect, and the parties lauchfullie warnit to compeir thairto, be thameſelfis, or thair procuratouris: And gif thay all compeir, or ſum compeir, and ſum compeir not, the Schiref ſould direct his precept to his depute, Serjand, or Officiar, quha, be virtue thairof, ſould enter all the parties that compeirit, ilk ane to thair awin part, conform to the cavil obtenit be thame, and to be bruikit and joiſit be thame in all time cuming, conform to the decrete and deliverance of the ſaid inqueſt, and the meithis and merchis expremit thairin. *Ex regiſtro. 7 Decemb*, 1555, *&* 9 *Mart.* 1555, Robert Robieſone *contra* John Foreſtar, *and utheris*.

C. XCVI. The landis ſould be dividit equallie.

THE ſervice of ane breve of diviſioun is of nane avail, and aucht to be reducit, gif the landis wer unequallie dividit, and ony of the parties portioneris of the ſaidis landis be hurt be diviſioun thairof; as gif the part aſſignit to him be diviſioun be of leſs proffeit or avail, be zeir, nor the uther partie's part. 21 *Maij*, 1548, Robert Dunlop *contra* Mathow Spreul, 1 *t. c.* 679.

C. XCVII. Ratificatioun of the diviſioun.

LANDIS beand dividit be deliverance of ane aſſiſe choſin upon the ſervice of ane breve of diviſioun, raiſit and impetrat furth of our ſoverane Lord's chapel, at the inſtance of ane partie aganis ane uther, gif ather of the parties gevis infeftment to his ſone, or ony uther perſoun, of ony part of the landis fallin to him be the ſaid diviſioun, he ratifies and apprevis the ſamin, and thairfoir on na wayis may impugn the ſaid diviſioun, nor call for reductioun thairof. *Ult. Maij*, 1546, 1 *t. c.* 620.

C. XCVIII. Certane meſouris of landis.

ITEM, Anent meaſouring of landis, it is ordanit, that ane pleuch ſould contene viij. oxen-gang; the oxen-gang ſould contene xij. aikeris; the aiker ſould contene iiij. rudis; the rude ſould contene

xl. fallis ; the fall ſould contene vj. elnis ; the eln ſould contene iij. feet, or xxxvj. inches.

Item, As tuiching the lenth and breid of aikeris and fallis: Gif the aiker be in lenth x. fallis, it is in breid xvj. fallis. Quhen the lenth is xj. fallis, the breid has xiv. fallis and ane half fall, and iij. quarteris of ane fute.

Quhen it has xij. fallis in lenth, then it has in breid xiij. fallis, and vj. feet.

Item, xiij. fallis lang is in breid xij. fallis, and v. fute and ane half.

Item, xiiij. fallis lang is xj. fallis broad, vij. feet, and viij. inches and ane half.

Item, xv. fallis of lenth, is in breid x. and ane half, and iij. feet.

Item, xvi. fallis lang, is x. fallis braid.

Item, xvij. fallis lang, is ix. fallis braid, viij. feet, and ane inche and ane half.

Item, xviij. fallis lang, is viij. fallis and vj. feet braid, and ſwa furth, reknand in lenth and breid as is abone expremit. *Pag.* 509. *c.* 24.

Anent purpreſture.

C. I. Purpreſture aganis the King, and pane thairof.

PURPRESTURE is quhen ony man occupyis wrangouſlie ony thing pertening to our ſoverane Lord the King, *ſupremum dominum regem*, as in his domain, or in ſtopping of the commoun gaittis, or of ony paſſages, or in turning water fra the richt courſe, or quhen ony in the King's burgh occupyis ony thing be bigging in the King's ſtreit, or commoun calſey, or away-taking or appropriating ony thing to his awin particular uſe ; and ſchortlie, be doing ony thing to the noy and hurt of the King's tenentis, the King's ſtreit, or to the King's citie, *Lib.* 2. *c.* 73. and ſould be thair finallie endit, *De jud. c.* 140. And quhaſaever beis convict thairof, all his landis and heritage, quhilk he haldis of his Grace, ſall be in his will and mercie ; and mairover, he ſall be decernit to reſtoir and deliver agane that quhilk he occupyit be way of purpreſture.

Item, Gif ony is convict to have occupyit ony thing in the King's citie, upon the King's ſtreit, the bigging ſall pertene to the King, gif it be ſufficientlie provin that the ſamin is biggit upon the King's ſoilzie ; and he quha biggit the ſamin ſall nevertheleſs remane in the King's mercie. And it is to wit, that the King's mercie is to be underſtuid in this cais, *viz.* quhen ane is convict to have done purpreſture within the King's burgh, als mekle of the pecunial pane as the ſworn men of the aſſiſe taxis and modifyis, bot ſwa that he quha is convict ſall not thairby tine and foirfault his landis and tenementis, gif he ony has, *Lib.* 2. *c.* 74. And it is to wit, that the King's ſtreit or gait ſould contene in breid xiiij. fute, and ſall not be diminiſhit in the ſaid breid be ony perſoun. *Aſſiſ. Reg. David. c.* 81. *Ex lib. Scon.*

Item, Gif ony perſoun biggis ony houſis or tenementis upon the commoun ſtreit, within ony of the King's burghis, the ſamin aucht and ſould pertene to the King's Hienes, as eſchete throw purpreſture, and may be gevin and diſponit be him to ony perſoun as he pleiſis. 10 *Novemb.* 1497, Patrik Cokburne *contra* Alexander Ramſay, 1 *t. c.* 95.

QUHEN

C. II. Purpreſture aganis ony inferiour over-lord, and pane thairof.

QUHEN ony man committis purpreſture aganis ony uther than the King, ſic as his over-lord, contrare to law and reſſoun, he ſould be diſtreinzeit to cum to his Lord's court, to mak redreſs, and do reſſoun thairanent: And gif he beis convict thairof in judgment, he ſall tyne and foirfault, without recoverie, the landis and tenementis quhilk he haldis of that over-lord: And gif he has na ſic landis, then the over-lord ſall call and perſew him befoir the Judge competent, anent the propertie and ground richt of that quhilk he occupyit.

C. III.

ITEM, Ony inferiour over-lord, under the King, may call and perſew his heritabill tenent, befoir himſelf, or his Baillie, in his awin court, for purpreſture, and may convict him thairintill, gif he be culpabill thairof, and decern him to have tint and foirfault the haill landis quhilkis he haldis of his ſaid ſuperiour; bot he on na wayis may call and convict his tenent of purpreſture, for ony of thir four cauſis following, to wit, Albeit the tenent raiſis and uptakis the maillis of the landis, clameand and avowand him to hald blanche ferm quhair he haldis be ward and releif, as is efterwart fund be ane aſſiſe. *Item*, Albeit the tenent intromet with and uptak the maillis and dewties of the landis, beand in the ſuperiour's handis be reſſoun of ward, as gif thay wer haldin blanche. *Item*, Albeit the tenent, alledgeand him to hald blanche, gevis not ſute to his over-lord's court. *Item*, Albeit the tenent give art, part, red, counſal, and conſent, to ony uther man aganis his over-lord, or his tenentis, in taking away thair gudis and geir. 7 *Julij*, 1480, *Laird of* Durie *contra Laird of* Calder, 1 *t. c.* 32.

C. IV. Of purpreſture betwix nichtbour and nichtbour.

QUHEN the meithis and merchis of landis betwix nichtbour and nichtbour ar invadit, and be occupatioun of ather of thame exceidit, gif ony of the nichtbouris complenis thairof, the Schiref ſall be commandit and chargit to tak cognitioun thairof be ane leill and ſworn aſſiſe; and the ſamin merchis beand ſichtit be thame, the Schiref ſall cauſe thame be reformit as thay ſould be, and as thay wer wont to be, conform to the deliverance of the ſaid aſſiſe. *Lib.* 2. *c. ult.*

C. V. Judge competent in purpreſture.

ALL clamis, contraverſies, and queſtiounis concerning purpreſture, aucht and ſould be decydit and determinat be deliverance of ane inqueſt, takin, be command of our ſoverane Lord's letteris, befoir the Juſtice-general, or his deputis: And gif ony ſic actioun be intentit befoir the Lordis of counſal, thay aucht and ſould remit the ſamin to the ſaid Juſtice; becauſe the ſamin pertenis to him allanerlie. 10 *Novemb.* 1497, Patrik Cokburn *contra* Alexander Ramſay, 1 *t. c.* 96.

C. VI. The maner and proces of purpreſture.

THE over-lord feilland himſelf greivit and hurt be purpreſture committit aganis him be his tenant, and intendand to hald ane court thairanent, may direct his precept to his Serjand, chargeand him to paſs with ſufficient witneſſis to the chemiſe of the ſaid landis, and thair to ſummound his tenent or vaſſal alledgit committar of the ſaid purpreſture, to compeir befoir him at ane certane day and place, to undergang and underly ane aſſiſe of pūrpriſioun and uſurpatioun, with

with the perrel that effeiris of the law, as he quha purpreſſis and uſurpis aganis him, his over-lord, of the ſaidis landis, with certificatioun, that quhidder he compeir or not, he will proceid aganis him be ane aſſiſe of purpriſioun and uſurpatioun, as the law leivis him; the quhilk precept beand deliverit to the Serjand, he ſall paſs to the chemiſe of the landis, in the quhilk purpriſioun is alledgit to be committit, and ther, be virtue of the ſaid precept, ſall ſummound the tenent to compeir befoir the ſaid over-lord, at ane certane day and place, conform to the ſaid precept: And quhen the court day is cum, the ſaid over-lord ſall paſs to the ſaid chemiſe of the ſaidis landis, and gar fence the court, and thairefter ſpeir at his Serjand, gif he ſummoundit the ſaid tenent, conform to the precept and charge direct to him of befoir to that effect: And gif the Serjand affirmis the ſamin to be lauchfullie done, the over-lord ſall charge the Serjand to call the tenent, anis, twiſe, thriſe, as he quha was ſummoundit to that court to undergang and underly ane aſſiſe of purpriſioun and uſurpatioun, with the perel that effeiris of the law, committit aganis his over-lord thair preſent in judgment. Quhen the tenent, ſwa thriſe callit, compeiris not, or compeiris, and alledgis na reſſonabill cauſe in the contrare, the over-lord ſall cauſe chooſe ane aſſiſe of the beſt and worthieſt of the four halfis about, and cauſe thame ſweir, and thairefter he ſall cauſe his Serjand to deliver his precept to the Clerk, to be red in preſence of the aſſiſe; the quhilk beand red, the Serjand ſall deliver the record, and indorſatioun of his ſummoundis, to be red be the Clerk in like maner; and then the Serjand's witneſſis ſall ſweir, that thay wer by, heird and ſaw, and for witneſſis wer takin, quhen the Serjand ſummoundit the ſaid tenent in form and maner as the record of the ſummoundis proportis; and then the over-lord, or his foirſpeikar, gif the partie proponis na exceptioun aganis the proceſs, ſall give in his clame to the aſſiſe in this maner: "To zou, gude men of the aſſiſe, I ſay, that "ſic ane man, beand my tenent and vaſſal, purpreſſis and uſurpis a-"ganis me, that is his over-lord, of ſic landis, in ſa far as he has cauſit eare, teill and ſaw my landis of *N.* or has biggit upon thame in "ſic ane place; quhairfoir he has foirfaultit to me for ever all the "landis quhilk he haldis of me. And this I put on God and zou, "gif it be thus." Then ſall the partie propone and object his defenſis aganis the ſaid clame, gif he pleiſis. Then ſall the aſſiſe paſs to the place quhairin the over-lord alledgis the purpriſioun to be done; and gif thay find the ſamin to be of veritie, thay ſall enter in court, and give furth thair declaratioun thairupon; and the ſamin beand done, the Dempſtar of the court ſall give dome in this maner: "This court ſchawis for law, and gevis for dome, that ſic "ane man, Lord of ſic ane baronie, is cum to the propertie and "poſſeſſioun of ſic landis, with thair pertinentis, lyand within the "ſaid baronie, for the foirfault of ſic ane man his tenent, maid to "the ſaid Lord in purpriſioun and uſurping aganis him his over-"lord of the ſaidis landis, with the pertinentis, in ſa mekil as he "earit and labourit the ſaid over-lord's proper landis in ſic ane place; "and that the ſaid tenent and vaſſal is in ane amerciament in this "court for his abſence, ſic as he aucht to tine of law. And this "I give for dome." *Proceſſ. cur. purpreſt. p.* 783.

Anent

Anent redemptioun of landis.

C. I. How the creditor ſould offer the landis to the debitor.

GIF ony man's landis be wodſet, he may outquite and redeme the ſamin quhen he pleiſis, except the redemptioun be ſuſpendit to ane certane term; and quhen the ſaid term cumis, he quha has thame in wodſet may at thré courtis offer thame to him quha ſould outquite thame: And gif he will not, the creditour that has thame in wodſet may ſell thame, and retene his Silver to himſelf: And gif thair be ony ſuperplus of the price of the landis, attour the ſowme that was auchtand him, the ſamin ſould be gevin to him quha aucht the landis. *Leg. burg. c.* 82.

C. II. Landis may not be grantit lauchfullie redemit upon deith-bed.

GIF ony perſoun havand landis or ahnuelrentis annalzeit to him, under reverſioun, grantis and confeſſis upon his deith-bed, without lauchful premonitioun or warning maid to him, the ſamin landis or annuelrentis to be lauchfullie redemit fra him, na ſowme, nor uther gude deid, being reallie and with effect reſſavit be him thairfoir, the ſaid confeſſioun is of nane avail, force, nor effect, and ſould be reducit, as maid in defraud of his air, quha aucht and ſould be reſtorit and reponit in the ſamin eſtait, as he micht have bene, gif the ſaid confeſſioun had not bene maid. 25 *Julij*, 1543, Marabill Stewart *contra Laird of* Forret, 1 *t. c.* 591.

C. III. In redemptioun of landis, baith the fear and the frank-tenementar ſould be warnit.

IN redemptioun of landis, conform to ane reverſioun, it is not ſufficient to warn the frank-tenementar thairof allanerlie; becauſe the fear and proprietar thairof ſould be in like maner warnit with the liferentar. 24 *Maij*, 1540, Henrie Ramſay *contra* William Dempſtar, 2 *t. c.* 7.

C. IV. Redemptioun ſould be conform to the reverſioun in all punctis.

IN all redemptiounis the haill punctis of the reverſioun aucht and ſould be fulfillit; and the ſummoundis of redemptioun ſould ſpeciallie contene and declair the ſamin to be obſervit, kept and fulfillit: utherwayis the ordour of redemptioun, with the ſummoundis, is of nane avail, force nor effect. 8 *Julij*, 1561, James Hering *contra* David Nairn, 1 *t. c.* 793.

C. V. The ſubſtantial punctis of the reverſioun ſould be red to the partie.

IN all redemptioun of landis, be virtue of ane reverſioun, he that makis the warning to that effect, quhidder he mak the ſamin perſonallie, or be his Procuratour, he aucht and ſould, at the day appointit for the redemptioun of the landis, reid and declair to him quha is warnit, requirand and deſyrand the ſamin, the day, the moneth, zeir, terme, and hour, and witneſſis contenit in the reverſioun, togidder with the name and ſurname of the Notar, ſubſcriver thairof, gif the ſamin be gevin under form of inſtrument; utherwayis, gif he, beand requirit, refuſis to do the ſamin, the form and ordour of redemptioun is of nane avail, force, nor effect. 2 *Jan.* 1568, *Mr.* Robert Maitland *contra* James Hervie, 1 *t. c.* 912.

C. VI. It is not neceſſar ſum-

GIF ony man buyis land under reverſioun, and thaireſter gevis life-

time to warn the liferentar.

liferent to ane uther perſoun, of the ſamin landis, or ony part thairof, haldin of himſelf, and his airis, he to quhom the reverſioun is maid is not bund or obliſt to warn the ſaid liferentar, nor zit to knaw him in the redemptioun of the landis, na mair nor ony ladie havand ane tierce or liferent thairof; bot it is ſufficient to him to warn and redeme the ſaidis landis fra the heritabill poſſeſſour of the ſamin. 18 *Mart.* 1562, *Laird of* Drumquhaſſil *contra Ladie* Polmais.

C. VII. Of takkis of wodſet landis ſet be the poſſeſſour thairof.

ANE heritabill poſſeſſour of landis annalzeit to him, or his predeceſſouris, under reverſioun, may not ſet ony takkis of the ſamin landis, gif thair be na takkis contenit in the reverſioun, to begin and indure efter the redemptioun of the landis: And gif thair be ony takkis contenit in the ſaid reverſioun, he may ſet takkis to ony uther, conform thairto, and na langer: And gif he dois utherwayis, the ſamin takkis ar null, be way of exceptioun; and the redemer of the ſaidis landis is not obliſt to keip the ſamin efter the redemptioun. 25 *Feb.* 1567, Jonet Dalrimpil *contra* Jonet Kennedie, 2 *t. c.* 330.

C. VIII. Conſignatioun of ſilver in redemptioun of landis.

IN redemptioun of landis, conſignatioun of ſilver maid lauchfullie be the redemer, conform to the tenour of the reverſioun, has als greit force and effect as real payment of the ſamin. 3 *Mart.* 1534, 1 *t. c.* 1003.

Item, Silver or money beand conſignit in ony man's handis, for redemptioun of ony man's landis, he in quhais handis the ſamin is conſignit, aucht and ſould deliver the ſamin to him fra quhom the landis ar redemit, at ony time efter the conſignatioun requirand and deſirand the ſamin: And gif he refuſis or delayis to mak deliverance thairof, he may be chargit be the Lordis letteris to deliver the ſamin within ſax dayis, or ellis to compeir befoir thame, and ſchaw ane reſſonabill cauſe quhy he aucht or ſould not do the ſamin. 25 *Junij*, 1540, 1 *t. c.* 1041.

Item, In redemptioun of landis, conform to ane reverſioun, beirand that the money ſould be conſignit in ane certane man's handis, gif the ſamin man, the time of the redemptioun, refuſis to reſſave and keip the ſaid money offerit to him, or gif he be abſent furth of the realme, or utherwayis cannot be apprehendit; it is leaſum to the redemer to conſigne the ſamin in the handis of ane uther man reſponſal, to be kept and be furthcumand to the utilitie and proffeit of him fra quhom the landis ar redemit. 20 *Jan.* 1551. 20 *April.* 1559, John Adamſon *contra* John Henriſone, 1 *t. c.* 1134.

Item, Gif it be contenit in the reverſioun, that the ſilver ſould be put in ſuir keiping, and the ſamin beis conſignit in the handis of ane perſoun that is not reſponſal thairfoir, nather is that conſignatioun nor warning ſufficient. 15 *Feb.* 1568, William Borthwik *contra Lord* Borthwik, 1 *t. c.* 1134.

Item, In redemptioun of landis conform to ane reverſioun, beirand, that in cais he fra quhom the landis ar redemit, refuſis to reſſave the money, it ſall be leaſum to the redemer to conſign the ſamin in the handis of ane certane man ſpeciallie namit in the ſaid reverſioun; gif the man in quhais handis the ſamin ſould be conſignit

ſignit, refuſis alſo or delayis to reſſave the ſamin, it is leaſum to the redemer, be reſſoun of the ſaid refuſal, to hald and retene the ſaid money, and to keip the ſamin in his awin handis, to be furthcumand to the utilitie and profſeit of him fra quhom the landis ar redemit, quhen he pleiſis to require or reſſave the ſamin: And he doand the ſamin, and not makand conſignatioun of the ſaid money in ony uther reſponſal man's handis, nevertheles, the ordour of redemptioun is lauchful and ſufficient. 3 *Julij*, 1542, James Scrimgeour *contra* John Kinnaird, 2 *t. c.* 118.

C. IX. The redemer of the landis may call and perſew the poſſeſſour to heir and ſé thame lauchfullie redemit.

It is to wit, gif the debtour has payit the debt, or has lauchfullie offerit or conſignit the ſamin, and nevertheles the creditour detenis and with-haldis maliciouſlie the wad, the debtour complenand thairof may rais the King's letteris, (*breve de rato*) chargeand him to compeir in judgment, and ſchaw ane reſſonabill cauſe quhairfoir he with-haldis and detenis the ſaid wad: And gif the creditour compeirand in judgment grantis that he haldis the ſaidis landis in wodſet, it behoveth him to give agane, or renunce thame, or ellis to ſchaw in judgment ane reſſonabill cauſe quhy he ſould not do the ſamin: Bot gif he alledge the ſaid wad or land to pertene to him as his richt and heritage, without ony redemptioun, then in preſence of baith the parties, or of the perſewar allanerlie, it ſall be put to the knawledge of ane inqueſt, quhidder the creditour haldis the ſaidis landis of fie or wad, and quhidder his predeceſſour died veſt and ſaiſit thairintill, as of fie, or as of wad; and as it beis fundin thairintill, anſwer ſall be gevin to the creditour withhalding the wad be reſſoun of his predeceſſour's ſaſine and richt. *Lib.* 3. *c.* 6. *De jud. c.* 140. *Iter. Camer. c.* 23.

Item, It is to wit, that gif the debtour compeir in judgment at the day of compeirance, the creditour alledgeand that he has the landis, or uther thing, in wadſet, ſchawis not be writ that he has thame wadſet, or quhair he has ony pledge or ſovertie thairfoir, bot allanerlie alledgis ane faith and promiſe maid be word, the ſamin is not ſufficient probatioun of ane wadſet in judgment; nevertheles, the debtour, quha is alledgit to have brokin his faith and promiſe, may be callit and perſewit befoir the ſpiritual Judge, *Lib.* 3. *c.* 6. for ſeeing it pertenis to the eccleſiaſtical Judge to cognoſce upon the violatioun and breking of faith and aith, all mutes and pleyis of debtis and tenementis pertening to laique men, may be perſewit and endit befoir him, be reſſoun of the aith and faith interponit thairintill, *De jud. c.* 140. And thairfoir, quhen promiſe is maid be the debtour to the creditour, anent ony thing to be laid in wad, and the creditour deliver to the debtour that quhilk he promiſit to lend him, in this cais, gif the debtour deliver not the wad promiſit to the creditour, the temporal Judge has na juriſdictioun nor powar to cognoſce upon ony ſic privie conventiounis maid of wadſettis within the King's court, or in ony uther courtis: And likewayis, gif ony landis be firſt wadſet to ane creditour, and thairefter to ane uther creditour, and contentioun and debait ariſe betwix thame thairanent, the temporal Judge on na wayis may cognoſce upon the privilegis of ſic creditouris anent thair prioritie and poſterioritie. *Lib.* 3. *c.* 5.

QUHEN

C. X. Of him quha alledgis landis to pertene to him heritabillie quhilk ar wadſet to him.

QUHEN ony perſoun askis and clamis landis or tenementis to be reſtorit to him, as wadſet be him, or ony of his predeceſſouris, gif the poſſeſſour thairof denyis the ſamin to be wadſet, alledgeand the ſamin to pertene to him in fie and heritage, he may be callit and perſewit in judgment thairfoir: And ſiclike, gif it happin ony creditour, havand landis in wadſet, to deceis, veſt and ſaiſit thairintill, and efter his deceis the debtour, or proprietar's air, raiſe a breve of mortanceſtrie aganis the ſaid creditor's air: And gif it be fund in judgment, in ony of the ſaidis twa caiſis abone ſpecifyit, that the landis pertenis to the poſſeſſour, as his fie and heritage, the perſewar on na wayis may perſew thame bot be the breve of richt: Bot gif it be cleirlie underſtuid that the landis ar wadſet, the poſſeſſour thairof, quha alledgit and affirmit thame to have bene his in fie and heritage, ſall tine and foirfault the ſamin, and mairover ſall have na richt nor actioun, be reſſoun of ony ſic alledgit wad, to recover the principal debt for the quhilk the landis wer wadſet. *Lib.* 2. *c.* 34.

C. XI. Of him that is maid aſſignay generallie to all reverſiounis.

GIF ony man makis and conſtitutis ane uther ceſſionar and aſſignay general to all reverſiounis pertening to him, and he thairefter mak ane uther aſſignay in ſpecial to ane reverſioun pertenand to him, the ſamin ſpecial aſſignatioun is of nane avail, force nor effect, in reſpect of the general aſſignatioun maid of befoir. 26 *Mart.* 1536, *Laird of* Kilſyth *contra Mr.* Gilbert Keith, 1 *t. c.* 408.

Item, Gif ony man makis and conſtitutis ane ceſſionar and aſſignay to ony reverſiounis ſpeciallie and particularlie, and alſwa in general to all uther reverſiounis, and bandis for reverſiounis, pertening to him, the aſſignay has gude richt and titill not onlie to all the reverſiounis particularlie namit in the aſſignatioun, bot alſwa be virtue of the ſaid general clauſe, to all uther reverſiounis, or bandis for reverſiounis, quhilkis pertenit to the aſſignant the time of the making of the ſaid aſſignatioun, albeit the ſamin be not particularlie namit thairin. 7 *Mart.* 1561, *The Erle of* Craufurd *contra Erle of* Ergile, 1 *t. c.* 802.

C. XII. Aſſignatioun maid to takkis contenit in ane reverſioun.

ALL aſſignatiounis maid be ony man havand landis pertenand to him heritabillie under reverſioun, to the takkis contenit in the reverſioun, and to begin and rin, efter the redemptioun of the landis, is null in the ſelf be way of exceptioun, gif the ſamin be maid befoir the redemptioun and outquyting of the landis; becauſe the ſaidis takkis wer not *in rerum natura* the time of the making of the ſaid aſſignatioun; *et aſſignatio ejus quod nihil eſt actu, nihil operatur.* 2 *Maij*, 1575, Cuthbert Dumbar *contra* Edward Creichtoun, 2 *t. c.* 370.

C. XIII. Of diſcharge and retroceſſioun of ane aſſignatioun maid to ony man.

GIF ony man makis ane uther his aſſignay to ane reverſioun, for redemptioun of landis, and the aſſignay lauchfullie intimat his aſſignatioun to the poſſeſſour of the landis, and thairefter mak retroceſſioun of the ſaid aſſignatioun to the aſſignant, reſtorand and reponand him in the place and ſtait quhairin he was, befoir the makand thairof; the ſaid aſſignant thairefter may not redeme the ſaidis landis be virtue of the reverſioun fra the ſaid poſſeſſour, except the ſaid retroceſſioun had bene lauchfullie intimat to him befoir the warn-

warning. 9 *Julij*, 1545, *Erle of* Glencarne *contra* Ninlan Creichtoun, 1 *t. c.* 978.

C. XIV. The aſſignant may uſe his richt at ony time befoir the intimatioun, like as he micht have done, gif the ſamin had not bene maid.

ANE aſſignatioun maid be ony perſoun to ane reverſioun, for redemptioun of landis, is not ſufficient, nor gevis na richt to him as aſſignay to redeme the ſaidis landis, gif the maker of the ſamin diſchargit the ſaid reverſioun, or redemit the ſaidis landis conform thairto, befoir the making of the ſaid aſſignatioun, or, at the leiſt, befoir the intimatioun of the ſamin lauchfullie to the heritabill poſſeſſour of the ſaidis landis, gevar of the ſaid reverſioun. 24 *Novemb.* 1564, Gavin Grahme *contra* Smith *and utheris*, 1 *t. c.* 1322.

C. XV. He that makis firſt intimatioun, ſould be preferrit to all utheris.

GIF ony perſoun makis divers and ſindrie aſſignayis to ony reverſiounis, for redemptioun of ony landis, the aſſignay quha makis firſt intimatioun and warning has juſt titill to redeme the ſamin, and ſould be preferrit thairintill to all uther aſſignayis. 20 *Feb.* 1562, *Erle of* Mortoun *contra the Laird of* Calder.

C. XVI. Ane appeirand air may mak aſſignatioun.

ANE appeirand air, not beand enterit nor ſervit air, may mak ane aſſignatioun to ane reverſioun gevin to his predeceſſour, and his airis, for redemptioun and outquyting of ony landis. 21 *Feb.* 1533, *Erle of* Murray *contra Lord* Ruthven, 2 *t. c.* 296.

C. XVII. The aſſignay may not be ſtoppit to redeme be virtue of ony obligatioun betwix the principal partis.

HE quha is maid and conſtitute aſſignay to ony reverſioun, for redemptioun of landis, may redeme the ſamin conform to the tenour of the reverſioun; and na obligatioun nor band gevin or maid betwix the maker of the reverſioun and the reſſaver thairof, for ſuſpenſioun of the reverſioun, and not expremit and contenit in the ſamin, can ſtop or delay the redemptioun. 4 *Julij*, 1577, *Laird of* Drumquhaſſil *contra Laird of* Minto, 2 *t. c.* 387.

C. XVIII. Of landis ſauld under reverſioun, to cum agane to the firſt ſeller.

LANDIS may be redemit be the firſt ſellar, fra the firſt buyar, or ony uther poſſeſſour. *Ja.* III. *fol.* 52. *act.* 35. 20 *Novemb.* 1469.

Item, Gif ony man ſellis or annalzies to ane uther landis under reverſioun, and the buyar thairof ſellis and diſponis the ſamin of new agane to his ſone, or ony uther perſoun, and makis lauchful intimatioun to him fra quhom he bocht the ſamin, the landis may on na wayis be redemit be virtue of the reverſioun foirſaid, fra him allanerlie to quhom thay wer firſt annalzeit, except the ſecund buyar be ſpeciallie warnit thairto, in reſpect of the alienatioun maid to him, and intimatioun thairof, maid as ſaid is. 11 *Maij*, 1545, *Laird of* Dalhouſie *contra* William Maxwell, 1 *t. c.* 599.

C. XIX. Landis quhilk may not be redemit fra the King, may not be redemit fra his donatar.

GIF landis may not be redemit fra the King, the ſamin may not be redemit fra his donatar, maid to the ſamin landis; becauſe the King and his donatar ſould bruke and joiſe ane and the ſamin richt. 3 *Junij*, 1556, *Laird of* Lethingtoun *contra Laird of* Corſtorphin, 1 *t. c.* 1301.

C. XX. Redemptioun of landis fra ane minor.

LANDIS may be redemit fra ane pupil, and his tutouris, as air to him to quhom the ſamin wer annalzeit under reverſioun, and the tutor ſould find ſufficient cautioun that the money reſſavit be him thairfoir ſall be laid upon land agane to the weill and proffeit of the pupil,

pil, or ſall be utherwayis furthcumand to his utilitie and proffit, at his perfeit age; the quhilk premiſſis beand done be authoritie and decrete of ane Judge, and the renunciatioun of the ſaidis landis maid be the tutor in name of the pupil, and the Judge's decrete interponit thairto, is ane ſufficient diſcharge to the redemer of the ſaidis landis in all time cuming. 16 *Julij*, 1518, Alexander Levingſtoun *contra* Gavin Dumbar, 1 *t. c.* 1205.

C. XXI. Redemptioun of landis fra him quha is at the horn.

GIF he fra quhom the landis ſould be redemit be rebel, and at our ſoverane Lord's horn, the time of the redemptioun, to the quhilk he is warnit to reſſave his money, it is leaſum to the redemer to conſign the money, conform to the tenour of the reverſioun, or to retene and keip the ſamin in his awin handis, to be furthcumand to the proffit and utilitie of him fra quhom the landis ar redemit, or of utheris havand ſpecial interes thairto. 14 *Decemb.* 1573, *Laird of* Hirdmeſtoun *contra* Johne Karkettill, 2 *t. c.* 352.

C. XXII. Anent warning fra redemit landis, and pane for not removing.

ITEM, Gif ony perſoun lauchfullie redeme ony landis, be conſignatioun of the money contenit in the reverſioun, the maillis, proffitis, and dewties of the ſamin landis, quhilk the redemar micht have had, gif he to quhom the ſamin wer annalzeit had in dew time renuncit the ſamin, aucht and ſould pertene to him fra the day of the conſignatioun of the money, albeit he, lang time thairefter, obtenit befoir ane Judge ane declaratour or decrete of redemptioun thairintill. 1 *Decemb.* 1522, 1 *t. c.* 367. *Vide in lib. impreſſo: Mar. R. fol.* 109. *act.* 23. 20 *Junij*, 1555.

C. XXIII. Of ane reverſioun contenand expreſs proviſioun concerning the ordour of redemptioun.

LANDIS beand annalzeit under reverſioun, with this proviſioun expreſlie contenit in the ſamin reverſioun, that it ſall not be leaſum to redeme the ſaidis landis unto the time that utheris landis befoir annalzeit be firſt redemit, the ſamin pactioun is leaſum of the law; and ſwa the landis quhilkis ar laſt annalzeit may not be redemit until the landis firſt annalzeit be quyte, and return to him quha annalzeit the ſamin, ather be way of redemptioun, conform to the reverſioun, or utherwayis. 12 *Julij*, 1566, Alexander Guthrie *of* Halkerſtoun *contra* Patrik Gairden, 1 *t. c.* 849.

C. XXIV. Of landis redemit be him quha annalzeit ane part thairof, under reverſioun, to him and his airis, and efter the alienatioun, and befoir the redemptioun, reſignit all the ſaidis landis in favouris of ane uther partie.

GIF ony man has ane baronie of land pertening to him heritabillie, and ſellis and annalzies ony part thairof to ony perſoun, to be haldin of himſelf, and his airis, under reverſioun to him and his ſaidis airis: And efter the making of the ſaid alienatioun and reverſioun, he reſignis the haill baronie, with tenentis, tenandries, and ſervice of fré tenentis thairof, in the ſuperiour's handis, in favouris of ane uther perſoun, reſervand to himſelf his liferent allanerlie thairof; gif efter the ſaid reſignatioun the ſaid reſignant redeme the foirſaid tenandrie or part, conform to the ſaid reverſioun, the propertie of the ſamin ſould remane with him, and his airis, in all time cuming, be reſſoun of the ſaid redemptioun, notwithſtanding of the ſaid reſignatioun, and reſervatioun of his liferent allanerlie, and ſall on na wayis pertene to him, and his airis, in quhais favouris the ſaid reſignatioun was maid; for he, be reſſoun of the ſaid reſignatioun, may clame na richt to the propertie of the ſaid tenandrie, or part, bot to the ſuperioritie thairof allanerlie, in reſpect

ſpect the ſaid reſignant had na mair pertening to him the time of the making of the ſaid reſignatioun; and befoir the making thairof, he was denudit of the propertie, be virtue of the ſaid allenatioun maid be him under reverſioun; and ſwa in this cais the propertie of the tenandrie is not, nor may not, be conſolidat with the ſuperioritie thairof in his perſoun in quhais favour the ſaid reſignatioun was maid: becauſe the time of the making of the ſamin, the ſuperioritie allanerlie pertenit to the reſignant, and thairfoir the ſamin ſuperioritie was allanerlie transferrit be virtue of the ſaid reſignatioun. 7 *Mart.* 1561, *Lady* Craufurd *contra Erle* Craufurd, 1 *t. c.* 1014.

C. XXV. Maillis and dewties of redemit landis.

LANDIS beand redemit at the term of *Martinmas*, the maillis, fermis, and dewties thairof, of the *Whitſounday*'s term preceding, aucht and ſould pertene to him fra quhom the landis ar redemit, *Pen. Julij*, 1552, 1 *t. c.* 1142. Bot the ſaid *Martinmas* termis, maillis and dewties, all and haill, pertenis to him quha redemit the ſaidis landis.

C. XXVI. Anent obligatioun gevin for ſuſpenſioun of ane reverſioun.

GIF ony man ſellis or annalzles his landis to ane uther under reverſioun, contenand ane certane ſowme of money; and, efter the making of the ſaid reverſioun, the maker and gevar thairof reſſavis mair ſilver fra the buyar of the ſaidis landis, and gevis to him obligatioun, ather ſuſpending the ſaid reverſioun for certane zeiris, or ellis obliſſand him, his airis and aſſignayis, not to redeme the ſaidis landis until the ſowme contenit in the obligatioun, als weill as the ſowme comprehendit in the reverſioun, be payit and deliverit togidder; gif he to quhom the ſaid reverſioun is maid makis and conſtitutis ony aſſignay thairto, for redeming and outquyting of the ſaidis landis, he, be virtue of the ſaid aſſignatioun, may redeme the ſamin, payand allanerlie the ſowme contenit in the reverſioun: And as concerning the money comprehendit in the ſaid obligatioun, actioun aucht and ſould be reſervit to him thairfoir aganis the reſſaver of the ſamin, conform to his obligatioun maid thairanent. 11 *Mart.* 1528, *Mr.* David Pitcarne, *contra* Andro Barrie, 1 *t. c.* 326.

Item, Landis beand annalzeit to ony man under reverſioun, contenand ane certane ſowme of money, and thairefter the gevar of the reverſioun gevis, in lent money, ane certane ſowme, and reſſavis his obligatioun thairupon, quhairin he, his airis and aſſignayis ar obliſt, that the ſaid lent ſilver ſall be eikit and adjoynit to the ſowme contenit in the reverſioun foirſaid; ſwa that it ſall not be leaſum to redeme the ſaidis landis untill the time that the ſaid ſowme contenit in the ſaid obligatioun, togidder with the ſowme contenit and comprehendit in the ſaid reverſioun, be togidder payit upon ane day; the ſaidis landis may on na wayis be lauchfullie redemit be him to quhom the ſaid reverſioun was maid, or his airis, except he pay and conſign als weill the ſowme contenit in the obligatioun, as in the reverſioun. 15 *Decemb.* 1565, Hector Law *contra* Andro Kinloch, 1 *t. c.* 842.

C. XXVII. Of ane ſpecial proviſioun maid anent redemptioun of landis.

GIF ony man annalzies landis to ane uther under reverſioun, and at the time of that alienatioun bindis and obliſſis him, his airis and aſſignayis, that, in cais the ſamin landis fall efterwart in ward, or utherwayis the buyar be vexit, troublit and ſkaithit, in bruiking thairof,

thairof, in that cais, it ſall not be leaſum to him, his airis nor aſſignayis, to redeme nor outquyte the ſaidis landis, untill the time he pay and deliver the ſowmis, quantities, and skaithis, quhilkis the buyar happinis to ſuſtene throw the ward, or uther vexatioun, togidder with the principal ſowme contenit in the reverſioun; gif the ſaidis landis fall efterwart in ward, non-entres, or ony uther ſtait or conditioun, quhairby the buyar thairof may not bruik the ſamin, induring the time of the ward or non-entres, and thairthrow incurris or ſufferis ony skaith or damnage, the ſaid annalzier, his airis or aſſignayis, may redeme and outquite the ſaidis landis fra the ſaid buyar, or ony uther poſſeſſour thairof, be payment or conſignatioun of the money contenit in the reverſioun allanerlie; ſpeciallie gif the ſaid buyar maid never, befoir the ſaid redemptioun, ony intimatioun of the ſaid obligatioun, nor liquidatioun to the ſaid annalzier, or his ſucceſſouris; of ony intereſt or damnage ſuſtenit be him in thair default, throw falling of the ſaidis landis in ward, or utherwayis, nor ever requirit thame to mak payment thairof: Providing alwayis that actioun be reſervit to him fra quhom the landis ar redemit, of the coiſtis, skaith and damnage ſuſtenit be him, for the cauſis foirſaid. 3 *Mart.* 1563, James *Erle of* Murray, *aſſignay to the Erle of* Buchane, *contra Lord* Ruthven; Alexander Home *contra* Alexander Home, 1 *t. c.* 828.

C. XXVIII. Of renunciatioun or granting of landis lauchfullie redemit.

GIF ony man has landis annalzeit to him under reverſioun, with ane particular and ſeveral obligatioun maid to him be the annalzier, beirand that, notwithſtanding that the landis be redemit fra him, he ſall bruik and joiſe the ſaidis landis for certane zeiris, or induring his lifetime; gif he grant the landis lauchfullie redemit, and renunce and diſcharge all richt quhilk he had or has thairto, the ſamin renunciatioun ſall be allanerlie underſtuid of the heritabill richt quhilk he had to the landis be reſſoun of the alienatioun, and ſould not be extendit to the ſaid obligatioun; and thairfoir he aucht and ſould bruik the landis conform to the ſaid obligatioun, notwithſtanding his renunciatioun foirſaid. 5 *Decemb.* 1566, *Laird of* Symontoun *contra N.* Weir, 2 *t. c.* 320.

C. XXIX. Renunciatioun of compriſit landis.

LANDIS compriſit fra ony man may not be redemit, except altogidder at ane time. 17 *Feb.* 1541, *The Erle* Bothwell *contra* Archibald Betoun, 2 *t. c.* 60.

Item, Landis compriſit fra ony man may be redemit within ſevin zeiris following the compriſing thairof, be him fra quhom thay wer compriſit, or his airis, be payment, or be lauchful conſignatioun of the principal ſowme quhairfoir thay wer compriſit, the Officiar's fie, and the expenſis maid in the compriſing, and for infeftment paſt thairupon; and thairefter the Lordis of counſal ſall direct thair letteris, chargeand the partie to quhom thay wer compriſit to renunce and overgive the ſamin, and to deliver all evidentis thairof to the maker of the ſaid redemptioun, to quhom the landis pertenit of befoir, or ellis to compeir at ane certane day, and ſchaw ane reſſonabill cauſe quhy he ſould not do the ſamin; albeit in redemptioun of landis, conform to ane reverſioun, the partie ſould be firſt callit to heir and ſé the landis to be lauchfullie redemit, befoir he be chargit to renunce and overgive the ſamin. 27 *April.* 1540, 2 *t. c.* 3.

Item,

Item, In redemptioun of compriſit landis, it is not requirit, that the redemer pay or conſign the expenſis maid be the compriſer, in obtening the infeftment: Bot gif the compriſer aſſign the landis to ony uther perſoun, and he obtene infeftment be virtue thairof; or gif the ſamin aſſignay ſell and annalzie the ſamin to ane uther man, he fra quhom the landis wer compriſit, or his airis or aſſignayis, ſould not be compellit to offer, or to conſign the expenſis maid be him quha was conſtitute aſſignay to the compriſit landis, nor be him to quhom the ſamin wer annalzeit be the ſaid aſſignay; becauſe the act of parliament comprehendis thame allanerlie quha maid the expenſis upon the compriſit landis, the ſamin beand redemit fra the ſamin perſoun. 24 *Julij*, 1542, Adam Hoppringill *contra* William Cairncorſe, 2 *t. c.* 124.

In redemptioun of compriſit landis within ſevin zeiris, it is not neceſſar to obſerve and mak warning upon fourtie dayis, as is commounlie uſit in redemptioun of landis annalzeit under reverſioun; bot it is ſufficient to warn the perſoun infeft in the ſaidis landis, upon ſic reſſonabill and convenient day and time as thay may cum to the place appointit for the recept of the money for the quhilk the landis wer compriſit. 10 *Julij*, 1564, Gorthie *contra Lord* Methven, 1 *t. c.* 1326.

Item, Compriſit landis may be redemit within ſevin zeiris, be him fra quhom thay wer compriſit, or be ony ceſſionar or aſſignay lauchfullie maid and conſtitute be him to that effect. 5 *Julij*, 1553, *Laird of* Buchanan *contra* Dunean Craufurd, 2 *t. c.* 243.

C. XXX. Na wayis is it leaſum to tak up the money conſignit for redemptioun of landis.

GIF ony man takkis up the money, or ony part thairof, conſignit be him in ane uther man's handis, for redemptioun of landis, the conſignatioun, and conſequentlie the ordour of redemptioun uſit be him at that time, is null and of nane avail. 14 *Junij*, 1536, Johne Sempill *of* Foulbryde *contra Ladie* Stanehous, 1 *t. c.* 136.

Item, Gif ony man conſignis money for redemptioun of landis, conform to the tenour of his reverſioun, and efter the conſignatioun, and befoir the obtening of the decrete of redemptioun, happinis to deceis, and his air and ſucceſſour takis up or intromettis with the ſaid money, or ony part thairof, and diſponis thairupon to his awin proffeit and utilitie, he is excludit fra the perſewing of the ſaid redemptioun, and the warning maid be his predeceſſour is caſſit and maid null fra the beginning, likeas gif his ſaid predeceſſour had tane up the ſamin money, or ony part thairof, in his lifetime. 15 *Feb.* 1562, *Laird of* Kinnaird *contra Laird of* Forret, 1 *t. c.* 1296.

Item, Gif ony man's Procurator, ſent to deliver or conſign ony money, for redemptioun of landis, efter the conſignatioun thairof, be himſelf, or utheris in his name, to his awin uſe and utilitie, takis up and intromettis thairwith, the ordour of redemptioun is not ſufficient, like as gif the redemer had intromettit with the money; and thairfoir he may not call and perſew for redemptioun of the landis be virtue of the ſaid warning and conſignatioun maid conform thairto; becauſe the money remanit not reallie, and in effect, to be furtheumand to the utilitie and proffeit of him quha was warnit, in default of him quha maid the warning. 6 *Junij*,

1549, *Laird of* Parbroth *contra* George Stratoun *of that ilk*, 1 *t. c.* 684. 23 *Mart.* 1573, 2 *t. c.* 356.

C. XXXI. Of the money of landis redemit fra ane man's air.

GIF ony man deceiſſis, havand landis in wodſet, the quhilkis efter his deceis ar redemit fra his air, the ſilver gevin for redemptioun thairof pertenis to his air allanerlie, and not to his executouris, gif thair was na uther proviſioun maid be him in his lifetime. 23 *Julij*, 1543, 1 *t. c.* 1084.

C. XXXII. TAKKIS of wadſet landis, ſet within the juſt valour, ſould not be kept efter the redemptioun. *Ja.* II. *fol.* 29. *c.* 18. 19 *Jan.* 1449.

Anent reverſiounis.

C. 1. Anent making of reverſiounis.

ANE reverſioun maid under form of inſtrument, be the Notar quha was in like wayis Notar in the inſtrument of ſaſine, is ſufficient, notwithſtanding the act of parliament maid anent the geving of reverſiounis, (*per Mariam reginam, fol.* 150. *t.* 2. 20 *Junij*, 1555,) and ſeilling thairof be the promitter and gevar of the ſamin. 27 *Jan.* 1555, Heriot *contra* Heriot, 2 *t. c.* 258.

C. II. Of tint reverſiounis.

GIF ony reverſioun, or band gevin for reverſioun, periſh or be tint *caſu fortuito, ſeu vi majori*, in his poſſeſſioun to quhom the ſamin was maid and deliverit, or in ony uther man's poſſeſſioun to quhom the ſamin was deliverit in keiping, to be furthcumand to his behove in quhais favouris the ſamin was grantit and gevin, he to quhom the ſamin was maid, or his airis, may call and perſew him quha maid the ſamin, or his airis; and gif he preive, be honeſt and famous witneſſis, quha can write and reid, the tenour and contentis of the ſaid reverſioun, and how the ſamin periſhit, was tint or deſtroyit, he aucht and ſould have deliverit to him ane new reverſioun, or band for that reverſioun, conform to the auld reverſioun in all punctis and clauſis, to the effect that he and his may redeme and outquite the landis quhen he or thay ſall think expedient. *Ult. Jan.* 1567, Thomas Vernour *contra* Andro Libbertoun, 1 *t. c.* 906.

C. III. Of ane band or obligatioun maid for delivering of ane reverſioun.

GIF ony man bindis and obliſſis him in ane contract or obligatioun, under form of inſtrument, or utherwayis, to give and deliver ane ſufficient letter of reverſioun, for redemptioun and outquiting of ony landis, he may be callit and decernit to do the ſamin, efter the form and tenour of the obligatioun and contract; albeit ane reverſioun may not be provin be ane privat inſtrument or contract, contenand and beirand the tenour of ane reverſioun into it, bot be ane letter of reverſioun ſeillit and ſubſcrivit conform to the act of parliament: And gif he be denuncit rebel, and put to the horn, for non-delivery of the reverſioun, and remaning rebel, refuſis and delayis to give the ſamin, the Lordis of counſal may decern the ſaid obligatioun or contract to have the full ſtrenth and force of ane reverſioun, for redemptioun and outquiting of the landis, to the effect that the perſoun havand richt thairto be not defraudit

fraudit or debarrit thairfra, be his partie adverſar's rebellioun and perſeverance thairintill. 22 *Feb.* 1541, Olivare Sinclair *contra* James Menzies. 2 *April.* 1541, *N. contra Erle of* Eglintoun, 2 *t. c.* 339.

C. IV. Ane minor may give ane reverſioun.

ANE pupil or minor may give ane reverſioun for redemptioun of landis annalzeit and wadſet to him, notwithſtanding his minoritie. 12 *Julij*, 1557, 2 *t. c.* 270.

C. V. Reverſioun maid to ane, and his airis, gottin of his bodie.

ANE reverſioun maid to ony man, and his airis gottin of his bodie, is not allanerlie to be underſtuid of the airis that wer gottin the time of the making of the ſaid reverſioun, bot alſwa of thame quha ar lauchfullie gottin and born eſter the making of the ſamin, quha thairfoir have powar to redeme the landis contenit in the reverſioun, conform to the tenour thairof. 19 *Mart.* 1537. 1 *t. c.* 1031.

C. VI. Reverſioun maid to ane, and his airis or bairnis.

GIF ane reverſioun be maid to ony man, and his airis, or to him and his bairnis, he may not mak ane aſſignay thairto: And gif he dois in the contrare, the aſſignatioun is of nane avail, force nor effect. 20 *Maij*, 1542, 1 *t. c.* 1075.

C. VII. Reverſioun maid to ſindrie perſounis *alternativè*.

ANE reverſioun maid to twa perſounis, for redemptioun of landis, *alternativè*, *viz.* to the ane, or to the uther, he quha makis the firſt warning excludis the uther fra the redemptioun of the landis.

C. VIII. Reverſioun maid to ane without mentioun of his airis.

Item, Ane reverſioun maid to ane perſoun allanerlie, not makand ſpecial mentioun of his airis and ſucceſſouris, he has richt thairto onlie, and his airis and ſucceſſouris, eſter his deceis, may clame na richt nor titil to the ſamin reverſioun, nather may thay redeme the landis thairin contenit be virtue thairof.

C. IX. Reverſioun maid to ane, his airis and aſſignayis.

ITEM, Gif ane reverſioun be maid to ony man, his airis and aſſignayis, he may mak aſſignay thairto ony quhom he pleiſis: And gif the aſſignatioun be lauchfullie intimat be the aſſignay to the heritabill poſſeſſour of the landis, the air is excludit fra all redemptioun of the ſaidis landis, and may clame na richt nor titill to the ſaid reverſioun. 27 *Novemb.* 1567, George Haliburtoun *contra Laird of* Haltoun, 1 *t. c.* 1350.

C. X. Reverſioun maid to ane man, his wife, and thair airis.

GIF ony man be bund and obliſt to give ane reverſioun to ane uther man, his wife, and to the langeſt livar of thame twa, and thair airis, the wife, eſter the husband's deceis, has gude actioun to call and perſew for delivering of the ſaid reverſioun to hir, to the effect that ſcho may redeme the landis be virtue thairof, gif ſcho pleiſis, and bruik the ſamin induring hir lifetime. 25 *Junij*, 1574, *Relict of umquhile N.* Cuninghame *of* Montgrenane *contra* Hew Cuninghame, 2 *t. c.* 363.

C. XI. Reverſioun contenand gold and ſilver.

GIF ony landis be annalzeit under reverſioun, contenand ane certane ſowme of gold and ſilver, he to quhom the reverſioun is maid may redeme the landis, payand or conſignand ony peice of gold, and the reſt in ſilver, or ony peice in ſilver, the reſt in gold; for

for it is not neceſſary in this cais to give ane half of the ſowme in gold, and the uther half in ſilver, or zit that the gold or ſilver quhilk he payis or conſignis be pure, and without commixtioun of ony uther metall; bot it is ſufficient to pay ſic ſilver and gold as has commoun courſe within the countrey for the time. And gif the valour of the gold and ſilver contenit in the reverſioun be mair and greiter at the time of the redemptioun than it was at the time of the alienatioun, the excreſcence and ſuperplus thairof *cedit lucro venditoris.* 12 *Maij*, 1540, *Mr.* James Foulis *contra* James Craig, 2 *t. c.* 7.

Redemptioun of landis aucht and ſould be with the ſamin kind of money that is contenit in the reverſioun, and with nane uther; and thairfoir, gif the reverſioun beir gold and ſilver, na plakkis, or ſic uther money, ſall be gevin or conſignit for redemptioun of the landis: And gif the ſamin be conſignit, the ordour of redemptioun is of nane avail; becauſe all reverſiounis ar *ſtricti juris*, and ſould be particularlie, *et in eadem ſpecie*, fulfillit; and thairfoir gif the reverſioun contene ony certane ſowme, and penie or halfpenie, it is not leaſum, for redemptioun of the landis, be virtue thairof, to conſign gold or ſilver. 15 *Maij*, 1547, Marion Ogilvie *contra N.* 2 *t. c.* 193.

C. XII. Diſcharge of reverſioun.

LANDIS beand firſt annalzeit to ony man under reverſioun, and thairefter beand of new annalzeit agane be him quha firſt annalzeit the ſamin to him quha firſt bocht thame, without mentioun of ony reverſioun, the ſamin landis may not be redemit be the ſellar, his airis or ſucceſſouris, be virtue of the ſaid reverſioun fra the ſaid buyar, or ony uther lauchful poſſeſſour, havand richt of him; becauſe be the laſt alienatioun maid *pure et ſimpliciter*, the annalzier, to quhom the reverſioun was maid, is underſtuid to have *tacitè* renuncit and diſchargit the ſamin. 13 *Junij*, 1534, Johne Greirſone *of* Lag *contra Laird of* Lochinvar, 1 *t. c.* 643.

C. XIII. Reverſioun is comptit *inter immobilia.*

ITEM, Ane reverſioun is comptit and reknit amang immovabill gudis. *Ult. Feb.* 1555, *Priour of* Sanctandrois *contra Laird of* Kinneir, 2 *t. c.* 358.

C. XIV.

LANDIS under reverſiounis, contenand gold or ſilver, of ſpecial valour, price, or cunzie, quhilk cannot be gottin, may be redemit, be payment of gold or ſilver, uſual for the time, and of the ſamin valour, wecht and fynes contenit thairin. *Mar. R. fol.* 161. *act.* 10. 20 *Junij*, 1555.

C. XV.

REVERSIOUN is vailzieabill to redeme the landis fra ony poſſeſſour thairof. Reverſiounis may be regiſtrat. *Ja.* III. *fol.* 52. *act.* 35. 20 *Novemb.* 1469.

Anent removing.

C. I. Of him quha being warnit

WARNING beand lauchfullie maid to ony perſoun, to flit and remove fra ony landis, gif he diſobeyis, and removis not,

not, he, as violent poſſeſſour, may be callit and convenit be the maker of the warning, for the violent proffitis of the landis quhilk the ſaid maker micht have had ſen the time of the ſaid warning, to the day of the geving of the decrete thairanent aganis him. 21 *Junij*, 1559, *Laird of* Tulliallan *contra Erle of* Rothes. 15 *Mart.* 1559, William Borthwik *contra* John Tait, 1 *t. c.* 1232. to remove, failzies thair-intill.

TENENTIS ſould be remövit in quiet maner, without convocatioun. *Mar. R. fol.* 145. *act.* 3. 4 *Aug.* 1546. C. II.

ANENT the warning of tenentis. *Mar. R. fol.* 161. *act.* 12. 20 *Junij*, 1555. C. III.

OF thame quha occupyis Lordis landis aganis thair willis. *Ja.* II. *fol.* 43. *act.* 89. 6 *Mart.* 1457. C. IV.

IN actiounis of removing of tenentis, and of redemptioun of landis, the warning is not ſufficient and lauchful, except thair be fourtie dayis fré betwix the term of warning and the term of *Whitſounday* or *Martinmas*, excludand not onlie the day of warning, bot alſwa the day of *Whitſounday* or *Martinmas*. 19 *Maij*, 1565, *Lord* Borthwik *contra* Johne Sym, 2 *t. c.* 305. C. V. Anent warning to be maid upon premonitioun of fourtie dayis.

ANE Lady beand ſervit to hir tierce, be ſone and ſchadow, and kend and enterit thairto, hir tierce is underſtuid to be ſeperat and dividit fra the twa part; and thairfoir the awner of the twa part may warn his tenent to flit and remove thairfra, like as the Lady tiercear may do to the occupyaris of hir tierce; for in this cais the tierce, and the twa part, is haldin to be bruikit *pro diviſo*, 21 *Feb.* 1561, Walter Ogilvie *contra* Johne Pettindreich, 1 *t. c.* 1278. C. VI. Anent removing of tenentis of tierce landis.

WARNING beand maid be ony perſoun, quha thairefter happinis to deceis, his airis may call and perſew, conform to the ſaid warning, the perſounis quha ar warnit, to heir and ſé thame decernit to flit and remove. *Ult. Junij*, 1574, Johne Broun *contra the ſpouſe of* Robert Hoppringill, 2 *t. c.* 363. C. VII. Anent warning maid be him quha thairefter happinis to deceis.

GIF ony man have tak and aſſedatioun gevin and diſponit to him, of ony landis, be the proprietar or Lord thairof, quhilk landis ar occupyit be ane tenent or poſſeſſour, the ſaid takkiſman, befoir he obtene entres and poſſeſſioun conform to his tak, has na powar to warn the ſaid tenent to flit and remove fra the ſaidis landis; and mairover he may not poind or diſtrenzie the ſaid tenentis gudis or geir, for the maillis and dewties of the ſaidis landis: Becauſe of the law of this realme ane takkiſman, not beand enterit in poſſeſſioun, has na powar to warn ane man to flit, nor zit to poind the ground: Bot ane takkiſman, or principal tenent, beand in poſſeſſioun, may warn and remove, be his awin precept allanerlie, and without his Lord's precept, his ſub-tenent. 15 *Junij*, 1542, Johne Sandilandis *contra* John Carmichaell. 21 *Jan.* 1541, Thomſon *contra* Ker, 2 *t. c.* 45. C. VIII. Anent powar grantit to the takkiſman to remove the tenentis and occupyaris of the landis.

ANE decrete of removing gevin at the inſtance of ony perſoun aga- C. IX. In actiounis of removing

intentit aganis the tenentis of the ground, the Lord of the ground ſould be alſwa callit.

aganis tenentis, mailleris, and occupyaris of ony landis, is of nane avail, and aucht and ſould be reducit, gif the Lord of the ground, quhom to the ſamin landis pertenis in heritage, was not lauchfullie callit for his entres in the ſaid matter. 12 *Decemb.* 1500, *Laird of* Buchanane *contra Erle of* Menteith.

C. X. Of him quha willinglie removis, and reſſavis gude deid thairfoir.

ANE tenent beand warnit to remove, gif he willinglie removis himſelf, or reſſave ane gude deid, or tak and aſſedatioun, or poſſeſſioun of uther landis, for thay landis fra the quhilk he willinglie removit, he may not perſew efterwart for ejectioun or ſpuilzie. 23 *Julij*, 1541, 1 *t. c.* 1059.

C. XI. Of landis pertenand to ane in liferent, and of the difference betwix landis occupyit be himſelf, and landis occupyit be his tenentis.

GIF ony liferentar of ony landis deceis, the air and proprietar of the ſaidis landis ſall, without ony proceſs, enter within the termis to the poſſeſſioun of all landis pertening to him, quhilk the ſaid liferentar occupyit as liferentar, with his awin gudis, and had in his awin hand the time of his deceis; and the ſaid proprietar ſould lauchfullie warn at the nixt feiſt of *Whitſounday*, efter the liferentar's deceis, all tenentis and occupyaris of landis, quhilkis ſumtime pertenit to the ſaid liferentar; utherwayis, gif he makis na lauchful warning and premonitioun to thame, he may on na wayis intromet with thair landis, rowmis, maillingis or poſſeſſiounis; becauſe takkis ſet be ane liferentar to ane tenent, continuis and induris efter his deceis, quhill lauchful warning be maid to the tenent to flit and remove thairfra. 16 *Decemb.* 1551, 1 *t. c.* 1133.

C. XII. Of tolerance grantit efter the warning.

ANE tenent beand warnit be his maſter at *Whitſounday* to flit and remove, and thairefter thoillit or ſufferit be tolerance and precarie of his maſter to ſit ſtill and remane to ane certane day, may lauchfullie be put furth, be way of deid, be his ſaid maſter, the ſaid time of tolerance beand bypaſt, or at ony uther time befoir *Martinmas* nixt followand the ſaid term of *Whitſounday*. 20 *Feb.* 1546, *Mr.* George Blair *contra Laird of* Clovay, 2 *t. c.* 176.

C. XIII. He quha is rebell may mak warning to his tenentis.

ANE man beand rebel, and at the horn, may warn his tenentis to flit and remove fra his landis and heritage, he not beand zeir and day at the horn; becauſe his landis, heritage, or immovabill gudis, cumis not under eſchete until ane zeir and day be bypaſt efter the denunciatioun. 19 *Mart.* 1576, *Laird of* Grenelaw *contra* Andro Reidpeth, 2 *t. c.* 386.

C. XIV. Of landis diſponit to ane man, and thairefter annalzeit be him to ane uther.

GIF ony perſoun be infeft in landis, in ſecuritie of ony ſowme of money to be payit to him, for tocher-gude, or utherwayis, and he thairefter annalzie the ſamin, or ony part thairof, to ony uther perſoun, befoir payment maid to him of the ſaid ſowme; in this cais, the ſaid ſowme beand fullilie and compleitlie payit to him, he may be chargit to remove and flit fra the ſaidis landis, notwithſtanding his ſaid infeftment; bot he to quhom the ſecund infeftment was maid ſould not be compellit to remove fra the ſaidis landis untill his infeftment thairof be ordourlie, be way of actioun, reducit, and declarit of nane avail. 28 *Junij*, 1542, *Laird of* Luſſe *contra Laird of* Kilbirnie, 2 *t. c.* 117.

THE

THE buyar of landis ſould keip the takkis ſet befoir the buying, *Ja.* II. *fol.* 29. *act.* 17. 19 *Jan.* 1449. C. XV. Tenentis may not be removit induring thair takkis.

Item, Gif ony man buyis landis fra ane uther, of the quhilk landis certane tenentis have takkis and aſſedatiounis maid and gevin to thame be the ſellar thairof, befoir the making of the alienatioun be him; the buyar aucht and ſould keip the ſaidis takkis to the tenentis, and may not remove thame befoir the compleit iſche and end theirof. *Ult. Mart.* 1558, Thomas Thomſon *contra tenentis of* Dudingſtoun, 1 *t. c.* 1163.

Item, Ane conjunct-fear of ony landis may not remove the tenentis and poſſeſſouris thairof, quha wer rentallit, or had tak and aſſedatioun of the ſamin, befoir the infeftment of conjunct-fie grantit to the conjunct-fear. *Ult. Julij*, 1561, *Ladie* Fleming *contra* Johne Grahme, *and utheris*, 1 *t. c.* 1262.

GIF ony man have landis pertening to him, and is in poſſeſſioun thairof, be occupying and labouring thairof, or taking up of the maillis and dewties of the ſamin fra the tenentis; and it happin that ony uther man obtene richt and titill of the ſamin landis fra ony uther perſoun havand powar to give the ſamin, without the conſent of him quha is in poſſeſſioun, as ſaid is; and the tenentis tak ony richt, titill, tak or aſſedatioun of the ſaidis landis, and becum tenentis to him quha laſt obtenit titill of the ſamin, thay may nevertheleſs be compellit to flit and remove thairfra at the firſt maſter's inſtance: And gif thay, beand warnit to remove, deſire ane day to be aſſignit to thame for calling of the ſecund maſter for thair warrand, be reſſoun of the richt and titill maid to thame of the ſaidis landis be thair ſaid ſecund maſter, the ſamin on na wayis ſould be gevin and grantit to thame; becauſe thay, beand tenentis to the firſt maſter, micht not intervert the poſſeſſioun without his conſent. 18 *Jan.* 1570, Robert Cuninghame *contra* Thomas Moreſone, *and utheris*, 1 *t. c.* 1022. C. XVI. Ane tenent takand richt fra ony uther man nor his awin maſter, may nevertheleſs be removit be his maſter.

LANDIS beand ſet in few to ony perſoun, the fewar may not cauſe the tenentis and occupyaris of the ſamin landis to flit and remove thairfra, aganis thair will, and without thair conſent, gif thay alledge and preive ſufficientlie that he, at the time of the taking of the few, promiſit to the ſetter of the ſaid few not to remove thame without thair awin conſentis. *Item*, The fewar may not remove thame during thair lifetime, gif thay in like maner preive, (not be witneſſis, bot be writ) that, befoir the warning, or zit befoir ony intimatioun maid unto thame be the fewar, of his richt and titill of the landis, the ſettar and gevar of the few rentallit thame in the ſamin landis, and promiſit to thame, or ony uther in thair namis, not to remove thame induring thair lifetimes. 5 *Mart.* 1569, *Mr.* Roger Gordoun *contra Laird of* Garthland. 26 *Jan.* 1569, Alexander Balfour *contra tenentis of* Threipwod, 1 *t. c.* 863. C. XVII. Anent removing of tenentis of few landis.

OF landis falland in ward, or utherwayis alterit, that the tenent- C. XVIII. Of the tenentis is remaning

efter thair new maſter's entrie; and the warning of the ſuperiour and air.

is ſall remane thairwith quhill the nixt *Whitſounday*. *Ja.* IV. *fol.* 91. *act.* 48. 18 *Maij*, 1491.

Item, Tenentis of ward landis, quhilkis ar in ward in the ſuperiour's handis, may not be warnit to flit and remove thairfra be ony uther perſoun pretendand richt to the ſaidis landis, except the ſuperiour, or his donatar, togidder with the air of him quha is deceiſt, be in like maner warnit with the tenentis. 8 *Jan.* 1566, *Erle of* March *contra* Stevinis, 1 *t. c.* 1334.

C. XIX. Tenentis of ward landis.

THE poſſeſſour of ward landis, albeit the time of the ward be endit, may not be removit thairfra, except he be lauchfullie warnit, and ordourlie decernit to deſiſt and ceis thairfra: And zit albeit, na warning beand maid to him, he may remane in poſſeſſioun of the ſaidis landis until the nixt term, nevertheleſs he aucht and ſould leive and deliver the tour, fortalice, and place of the ſaidis ward landis incontinent to the air havand richt thairto; becauſe houſis and fortalices ſould be deliverit to thame quha has richt thairto, upon ſax dayis warning, but ony delay or expectatioun of ony termis. 12 *Decemb.* 1543, Cuninghame *contra* Cuninghame, 2 *t. c.* 130.

C. XX. The ſuperiour may remove the tenentis of ward landis.

GIF landis fall in the ſuperiour's handis be reſſoun of ward, he may at the nixt term warn the occupyaris thairof to flit and remove thairfra, and put his handis to the ſamin landis, and intromet thairwith; and it is not neceſſar that he call the tenentis and utheris to heir and ſé the ſamin landis decernit to have fallin in ward, and thairby to pertene to him, albeit it be utherwayis in cais of non-entres, in the quhilk it is neceſſar that the landis be firſt decernit, be decrete of the Lordis, to be in non-entres. 28 *Maij*, 1549, *Laird of* Dunnoone *contra* Robert Steuart, 2 *t. c.* 213.

C. XXI. The Lord of the ground may not remove the ſubtenent havand takkis of the maid tenent.

GIF ony man ſet tak and aſſedatioun to ane tenent, of landis pertening to ane uther man, the proprietar and juſt awner thairof may not remove the tenent, beand in poſſeſſioun of the ſamin, and havand takkis for termis to rin, bot be the authoritie and decrete of ane Judge; utherwayis, gif he dois the ſamin at his awin hand, he cummittis ejectioun and ſpuilzie; becauſe ane beand in poſſeſſioun be virtue of ane titill, albeit the ſamin be injuſt, may not be put thairfra, except he be lauchfullie callit, and ordourlie put fra the ſamin be ane Judge. 23 *Novemb.* 1540, 2 *t. c.* 9.

C. XXII. Of ane beand in poſſeſſioun be virtue of tolerance.

HE quha is in poſſeſſioun of ony landis *precario*, or be tolerance of ony uther perſoun havand richt and titill thairto, may not be removit thairfra, or ejectit be him or ony uther, except he be lauchfullie warnit, and ordourlie put thairfra be the authoritie of ane Judge, 4 *Mart.* 1540, *Abbot of* Cambuskynneth *contra* Foreſtar, 2 *t. c.* 15. *Item*, Ane beand in poſſeſſioun be virtue of ony colourit titil, and havand takkis for termis to rin, may not be put fra his poſſeſſioun, except he be ordourlie callit befoir ane Judge, 2 *t. c.* 191.

C. XXIII. He quha takis gude deid fra ane as his tenent may not remove him.

NA man may remove his tenentis and occupyaris of his landis, gif thay preive that he tuke gude deid fra thame, as his tenentis, and promiſit not to remove thame, or ony of thame, induring his life-

lifetime; the quhilk promiſe may not be provin be witneſſis bot be writ. 15 *Julij*, 1540, David Hamiltoun *contra* Robert Hamiltoun, 1 *t. c.* 510.

C. XXIV. Occupyaris *pro indiviſo*, may not be removit until the landis be dividit.

TENENTIS or occupyaris of landis, occupyand the ſamin *pro indiviſis*, may not be compellit to flit and remove thairfra: And gif the perſewar alledge, that thay occupy ſeverallie, *et pro diviſo*, the ſamin ſould be admittit to his probatioun. 15 *Feb.* 1562, *Laird of* Roſling *contra* Mathow Sinclare, 1 *t. c.* 1291.

Item, Gif ony perſoun be infeft heritablllie in ony landis, to wit, in ane xx. mark land, and makis and gevis heritablll infeftment of ony part of the ſamin, as ane x. mark land, lyand at the ſone, or at the ſchadow, to ony perſoun, he may on na wayis remove, or cauſe him flit thairfra, ſa lang as he poſſeſſis *pro indiviſo*: And gif he obtenis ony decrete of removing aganis him, the ſamin ſould be ſuſpendit, and have na executioun, until the landis be dividit, and quhill it be knawin quhair the ſaid x. mark land lyis, and the ſamin be ſeverallie dividit fra the remanent of the xx. mark land. 24 *Julij*, 1542, George Arnot *contra* William Ramſay. *Ult. Julij*, 1556, Olivar Sinclare *contra* George Home. 2 *Junij*, 1557, Johne Craufurd *contra Mr.* David Barclay, 2 *t. c.* 558.

C. XXV. He quha reſſavis the maillis efter warning, may not remove the tenentis.

GIF ony man makis warning to ane uther, to flit and remove fra ony landis or poſſeſſioun, and, efter the making of the ſamin, takis and reſſavis fra him ony maillis of the ſamin landis, of ony termis then bypaſt, and exoneris and diſchargis him thairof, he may not perſew him to remove fra the ſaidis landis be reſſoun of the foirſaid warning: And gif he quha is warnit removis not, the maker of the warning may not call nor perſew him for violent occupatioun; becauſe, be reſſaving of the maillis foirſaid, he ratifyit and approvit him tenent, and *tacitè* paſt fra the ſaid warning. 3 *Junij*, 1549, *Laird of* Blairquhan *contra* Duncan Craufurd, 1 *t. c.* 682.

C. XXVI. Service or gude deid reſſavit fra the husband, annullis the warning maid aganis him and his wife.

WARNING beand maid to ony perſoun havand ane lauchful wife, quha happinis, efter the making of the ſamin, to deceis; nather his wife, as wife, nather as haill intromiſſatrix with his gudis and geir, may be callit and perſewit to flit and remove be reſſoun of the ſaid warning, gif the maker thairof, efter making of the ſamin, chargit hir husband, befoir his deceis, as tenent of his ſaidis landis, to ride, gang or ſerve him on ony of his occaſiounis, materis, or affairis, and acceptit the ſamin fra him as tenent foirſaid. 26 *Junij*, 1550, John Wallace *contra* Sibilla Cathcart, 1 *t. c.* 643.

C. XXVII. Takkis for termis to rin, keipis baith the tenent and ſub-tenent unremovit.

ANE ſub-tenent havand tak and aſſedatioun of ony tenent, quha had tak of the ſamin landis for termis to rin the time of the making of the warning, and was in poſſeſſioun thairof, havand powar to mak aſſignay, or ſub-tenent, may not be compellit to flit and remove thairfra, gif he be in poſſeſſioun be virtue of his ſaid tak. 17 *Mart.* 1561, David Arnot *contra* Elizabeth Arnot. 10 *Mart.* 1562, Francis Douglas *contra* Alexander Hamiltoun, 1 *t. c.* 803.

C. XXVIII. Tenentis of few landis.

THE heritabill few or heritage of landis, beand diſponit to ony man, he may not, be reſſoun thairof, remove the tenentis and occu-

occupyaris of the ſamin landis, thay havand, the time of the warning, takkis thairof for termis to rin, gevin and diſponit to thame be the ſettar of the ſaid few, or his predeceſſour, befoir the few and heritabill richt diſponit and grantit to the perſewar.

C. XXIX. Of promiſe makand relatioun to the will and modificatioun of ane thrid perſoun.

ITEM, Gif ony man, at the time of the making of the warning, promiſe that he ſall not remove him quha is warnit, quhill he firſt ſatisfie and content him thairfoir, at the ſicht and diſcretioun of ane uther thrid perſoun; the ſamin beand ſufficientlie provin, he may not remove him until he have done the ſamin. 19 *Feb.* 1562, *Mr.* William Gordoun *contra* William Forbes *of* Corſinday, 1 *t. c.* 804.

C. XXX. Service or gude deid reſſavit fra the tenent, ſtoppis the warning.

WARNING beand maid to ony tenent or occupyar of landis, quha of befoir was in poſſeſſioun of the ſaidis landis, and in uſe of payment, and doing of certane dewties and ſervice thairfoir, efter the tenour of his tak and aſſedatioun; gif the maker of the warning, efter the making thairof, acceptis fra the tenent ony part of the ſaid ſervice, ariage, cariage, or uther dew ſervice, the doing and acceptatioun thairof makis the tenent unremovabill for that zeir: Bot gif the tenent bruik and joiſe the ſaidis landis be virtue of ony tak or aſſedatioun, and he do his maſter ony ſervice or dewtie quhilk is not contenit in the ſaid tak and aſſedatioun, the doing and acceptatioun thairof is not helpful to the tenent, nor hurtful to the maſter; becauſe the tenent was not obliſt to do the ſamin. 8 *Jan.* 1563, Alexander Boyd *contra* Robert Boyd. 7 *Novemb.* 1569, John Steuart *contra tenentis of* Eildoun, 1 *t. c.* 813.

C. XXXI. He quha denudis himſelf of the richt of the landis, may not remove the tenent thairfra.

GIF ony man, or Lady tiercear, or conjunct-fear, makis ane aſſignay to thair richt and titill of ony landis pertening to thame, or puttis ony man in fie thairof, or utherwayis diſponis thair richt thairof to ony perſounis, thay may not, in thair awin namis, warn and remove the tenentis or occupyaris of the ſamin thairfra; becauſe the tenentis may juſtlie alledge, that the perſewar, befoir the making of the warning, was denudit of the propertie and richt of the ſaidis landis, in maner foirſaid, be diſpoſitioun of the ſamin to ane uther, quha, be virtue thairof, is in poſſeſſioun of the ſamin. 17 *Maij*, 1566, Agnes Scot *contra* Nicol Baird, 1 *t. c.* 845.

C. XXXII. Gif the tenentis removis willinglie, and thairefter ar re-enterit be thair maſter, thay ar unremovabill for that time.

LAUCHFUL warning beand maid to tenentis and occupyaris of landis to remove thairfra, and thay, of thair awin fré motive will, obey the ſamin, gif thairefter he that maid the warning, or ony in his name, enter thame of new agane to the poſſeſſioun of the ſaidis landis, he thairby paſſis *tacitè*, and in effect, fra the ſaid warning, and may not perſew the ſaidis tenentis in ony time cuming, be virtue thairof. 17 *Feb.* 1558, Marion Hoppringle *contra* Elizabeth Nisbet, 1 *t. c.* 1223.

C. XXXIII. He may not be removit quha is in poſſeſſioun be virtue of ane titill.

HE quha is in poſſeſſioun of landis be virtue of his infeftment, or ony uther titill, ſould not be troublit nor moleſtit thairin, nor compellit to flit and remove thairfra, be ony uther havand titill, or beand infeft in the ſamin landis, without poſſeſſioun, albeit he was firſt or laſt infeft; becauſe poſſeſſioun conform to ane titill, zit ſtand-

and

and unreducit, ſould be preferrit, and is of greiter ſtrenth, force and effect, nor ony uther titill priour or poſteriour, not beand cled with poſſeſſioun followand thairupon, ay and quhill the ſamin titill be ordourlie reducit, 15 *Jan.* 1570, Chriſtian Knouis *contra* Johne Knouis, 1 *t. c.* 880. And thairfoir he ſall not be decernit to remove, gif he be in poſſeſſioun be virtue of ane titill maid to him be the perſewar, or be ony of his predeceſſouris, or be quhatſumever perſoun, befoir the titill maid and gevin to the perſewar, maker of the warning, 13 *Decemb.* 1561, *Maſter of* Errol *contra* Andro Keyth, 1 *t. c.* 1270.

C. XXXIV. Of promiſe of rentalling maid be the maſter to the tenent.

GIF ony man takis or reſſavis gude deid fra ane uther, and thairfoir promiſis to rental him in ony landis, the ſamin beand ſufficientlie provin be writ, he may not efterwart warn him to flit and remove, induring the lifetime of him to quhom the promiſe is maid; becauſe ane promiſe of rentalling in ony ſpecial landis, maid *ſimpliciter*, without ony ſpecificatioun or mentioun of ony certane nombre of zeiris or time, is als mekil as the ſetting or reſſaving of ane perſoun in tenent for his lifetime in the ſamin landis, ſpeciallie gif thay be kirk landis. 19 *Jan.* 1567, *Proveſt* Lincluden *contra the Laird of* Lochinvar, 1 *t. c.* 657.

C. XXXV. He quha promiſis to infeft the tenent in landis, may not remove him thairfra.

GIF ony perſoun bindis and obliſſis him and his airis, to infeft ony man in certane landis, (beand preſent tenent and poſſeſſour thairof) how ſoon he or his airis obtene heritabill ſtait of the ſamin landis; gif he thairefter obtene ſaſine thairof, he may not warn the ſaid tenent to flit and remove thairfra; becauſe he beand bund and obliſt to mak the ſaid tenent ſic ane richt and titill as may defend him unremovit, he can have na actioun of removing aganis him: And ſiclike is to be underſtuid of him quha makis promiſe *ſimpliciter*, to infeft ony tenent in ony landis; for he may not remove him thairfra, the ſamin promiſe beand ſufficientlie provin be him *per ſcripta*. 28 *Jan.* 1567, *Laird of* Garthland *contra* Alexander Cambell. 29 *Jan.* 1569, Alexander Balfour *contra tenentis of* Threipwod, 1 *t. c.* 858.

C. XXXVI. He quha has takkis for termis to rin may not be removit.

NA tenent or occupyar of ony landis, warnit to flit and remove thairfra, ſould be decernit to do the ſamin be reſſoun of the ſaid warning, gif he alledgis and preivis, that he, or his author, with quhais richt he is cled, had takkis of the ſamin landis for termis to rin the time of the ſaid warning, 19 *Decemb.* 1569, *Lord* Roſs *contra* Johne Levingſtoun, 1 *t. c.* 874.

Item, Gif ony man be perſewit for removing fra landis, it is ſufficient to him to alledge and preive that he had takkis for termis to rin the time of the warning maid aganis him, ſuppois the ſamin takkis be expyrit and outrun during the intenting of the actioun and dependence of the pley. 28 *Junij*, 1553, *Mr.* Johne Abircrombie *contra Ladie* Ardros, 1 *t. c.* 1163.

Item, Ane tenent havand tak and aſſedatioun for termis to rin, may not be removit; and he beand warnit to remove, and not removand, may not be callit for violence, his tak ſtandand unfoirfaultit and unreducit. 6 *Julij*, 1549, 1 *t. c.* 1106.

GIF

C. XXXVII. Promiſe of not removing of ane tenent for ane zeir.

GIF he quha maid the warning thairefter ſay to his tenent that he will not remove him, bot will ſuffer him to bruik the ſamin lands is for ane zeir, as he did of befoir, he *tacitè* and in effect renuncis and diſchargis the ſaid warning; and thairfoir the tenent may not be compellit to remove be virtue thairof, he preivand the ſaid promiſe be witneſſis, or utherwayis. 2 *Maij*, 1559, John Piggot *contra* Thomas Annand, 1 *t. c.* 1241.

C. XXXVIII. Anent warning maid be ane as aſſignay.

GIF ony man, as ceſſionar and aſſignay maid be ane uther, maks warning to ane tenent to flit and remove, he ſould not be decernit to do the ſamin, gif he preivis ſufficientlie that the perſewar's author, quha maid him aſſignay, and be quhais richt and titill he perſewis, befoir the making of the ſaid aſſignatioun, or at the leiſt befoir the lauchful intimatioun thairof, renuncit and diſchargit all richt and titill quhilk he had or micht have to the ſaidis landis, or zit rentallit the ſaid tenent thairintill, or maid him ony uther titill thairof. *Pen. Feb.* 1561, John Henrie *contra* Catherine Maxtoun, 1 *t. c.* 1279.

C. XXXIX. He quha efter the warning, reſſavis ſovertie fra the tenent, annullis the ſaid warning.

GIF ony man, efter the making of warning to his tenent to flit and remove, is content that ony perſoun becum obliſt as ſovertie for the tenent, to pay to him ony maill, greſſum, or uther dewtie, for the ſamin landis, and for the ſamin zeir or term contenit in the warning, he thairby renuncis and diſchargis the ſaid warning, and thairfoir may not remove the ſaid tenent for that term. 24 *Mart.* 1563, Alexander Cokburne *contra* Patrik Hepburne, 1 *t. c.* 1318.

C. XL. He quha efter the warning denudis him of the richt of the landis, may not remove the tenent.

GIF ony man, efter warning maid be him to his tenent, annalzies his landis to ane uther, under reverſioun; or gif landis be lauchfullie compriſit fra ony man, he may not thairefter remove the tenentis and occupyaris thairof; becauſe he was denudit of the richt thairof efter the warning, and ane uther heritabillie infeft thairintill, havand infeftment thairof unreducit and diſchargit. 17 *Feb.* 1564, *Laird of* Preſtoun *contra* Robert Steuart, 1 *t. c.* 1325.

C. XLI. The ſecund perſoun contenit in ane aſſedatioun, may not remove the tenent quha obtenit richt fra the firſt tenent of the ſamin aſſedatioun.

TAK and aſſedatioun of ony landis beand gevin and grantit to ane man and to his wife, and to ane air maill gottin or to be gottin betwix thame, quhilkis failzieing, to the airis maill of the ſamin takkiſman quhatſumever; the ſaid man, firſt perſoun in the aſſedatioun, may ſell and diſpone to ony perſoun, at his pleaſour, all richt, titill, and interes, quhilk he or his airis has or may have in time cuming, to the ſaid tak and aſſedatioun; quhilk beand done *titulo oneroſo*, or with clauſe of warrandice, his ſone, or, failzieand of him, ony narreſt appeirand air maill, obtenand heritabill richt of the ſaidis landis fra the proprietar thairof, may not intent actioun of removing aganis him to quhom the richt of the ſaid aſſedatioun was diſponit; becauſe he is narreſt air maill to him quha maid the ſaid diſpoſitioun and richt: And albeit he renuncis to be air to him, in defraud of the defendar, zit ſa lang as he is livand, and is firſt perſoun quha micht have ſucceidit to his father or predeceſſour, as air to the ſaid tak, he can have na ſufficient actioun aganis the defendar to perſew him for removing fra the ſaidis landis, induring the

the termis and zeiris of the ſaid aſſedatioun. 3 *Mart.* 1566, David Abircromby *contra* David Tyrie, 1 *t. c.* 902.

Anent ſpuilzie and ejectioun.

C. I. He quha is ejectit ſould be incontinent reſtorit.

GIF ony of our ſoverane Lord's lieges is in juſt or unjuſt poſſeſſioun of ony landis or tenementis, litil or mekil, and is ejectit thairfra be ony perſoun, alledgeand him to have richt and titill thairto, of his awin proper authoritie, and without the dome of ane Judge; he that was in poſſeſſioun, and is ejectit thairfra, ſould incontinent be reſtorit to the ſamin, quhidder he was richteouſlie or wrangouſlie in poſſeſſioun thairof, and ſould bruik and joiſe the ſamin, quhill he be lauchfullie callit, and ordourlie put thairfra be decrete of ane Judge: And mairover, he quha committit the ſaid ejectioun, ſall be in the King's unlaw and will thairfoir. *Rob.* III. *c.* 17. *Leg. burg. c.* 99.

C. II. Reſtitutioun of ſpuilzie.

THE Schiref ſould cauſe reſtitutioun to be maid of gudis ſpoilzeit and reft, utherwayis he becumis debtour thairfoir. *Ja.* II. *fol.* 28. *c.* 10. 20 *Jan.* 1449.

That the Officiaris and Lordis of regalities ſall execute and fulfill this foirſaid act. *Ibid. c.* 11.

The committar of ſpuilzie ſould mak reſtitutioun, pay the expenſis, and ane unlaw to the King. *Ja.* II. *fol.* 29. *c.* 19. 19 *Jan.* 1449.

C. III. The perſewar and defendar ſould find ane borgh.

IN all actiounis of nouvelle diſſaſine, the perſewar, at the raiſing of the ſummoundis, ſould find ane borgh in the Judge's handis, that he ſall perſew his actioun and clame: And gif he perſewis not his cauſe, or happinis to be convict and decernit to have done wrang, he ſall be in the King's mercie be reſſoun of his injuſt perſute, and he or his borgh ſall pay ane unlaw of x. *lib.* to the King: And ſiclike the defendar ſould find the like borgh that he ſall defend in the cauſe perſewit and intentit aganis him: And gif he compeir not at the day of compeirance, or tynis the cauſe, and is convict thairintill, he ſall be in the King's mercie be reſſoun of his unjuſt defence, and thairfoir he, or his borgh, ſall pay to the King ane unlaw of x. *lib. Stat.* 1. *Rob. Bruce, c.* 11. *Stat.* 2. *Rob. Bruce, c.* 32. *Iter. Juſtic. c.* 6. *Quon. attach. c.* 31. *Lib.* 3. *c. ult.*

C. IV. Warrand has place in nouvelle diſſaſine.

IN actiounis or cauſis of nouvelle diſſaſine, na eſſonzie ſould be admittit; for albeit the defendar compeir, or not, the ſummoundis ſould proceid and reſſave proceſs; for in this cauſe and actioun na privilege is grantit to the defendar, quhidder he be of perfeit age, or of leſs age: And na reſpyte ſould be gevin to the cuming and compeirance of ane warrand; becauſe, gif the defendar deſiris ane term to call his warrand, in this cais he grantis and confeſſis the petitioun and clame of his adverſar, and thairthrow ſall remane in the King's will and mercie; and thairefter it ſall be leaſum to him to call his warrand, quhom of befoir he deſirit to call, and ſwa to perſew him thairanent, as warrand, *Lib.* 3. *c. ult. De jud. c.* 100. And mair-

over, gif the defendar has obtenit infeftment or uther titill of the landis or gudis clamit fra ony uther perſoun, and deſiris ane day to call his warrand and author, or his airis, fra quhom his richt and titill procedit, the ſamin ſould be grantit to him, but the principal cauſe ſould not be thairby ſtopt or delayit. *Stat.* 1. *Rob. Bruce, c.* 11. *Stat.* 2. *Rob. Bruce, c.* 13.

C. V. SUMMOUNDIS upon recent ſpuilzie may be execute upon fiftene dayis. *Ja.* IV. *fol.* 104. *act.* 99. 11 *Mart.* 1503.

C. VI. The ſpuilzie may be perſewit criminallie or civillie. GIF ony man committis ſpuilzie of ony gudis or geir pertening to ane uther, he may be callit and perſewit criminallie befoir the Juſtice, at ane particular diet; and he beand chargit, and not findand cautioun to underly the law for the ſaid crime, he may be denuncit rebel, and his gudis and geir eſchetit and inbrocht to the King's uſe. 20 *Julij*, 1548, 1 *t. c.* 1102.

C. VII. Probatioun of ſpuilzie. THE ſpuilzie of ony gudis and geir beand provin be witneſſis, as commounlie it ſould be, conform to the law of this realme, the avail and quantitie of the gudis ſould be referrit to the perſewar's aith, 18 *Julij*, 1532. Bot ſpuilzie not beand ſufficientlie provin, the ſamin, or quantitie thairof, aucht not to be referrit to his aith. 17 *Junij*, 1533, Alexander Zoung *contra Schiref of* Fife, 1 *t. c.* 449.

Item, In actiounis of ſpuilzie or ejectioun, *factum ipſum*, that is, the committing of the ſaid ſpuilzie or ejectioun, may be provin be witneſſis; the quhilk beand provin, the avail, quantitie and prices of the ſaidis gudis ſpuilzeit aucht and ſould be referrit to the perſewar's aith. 29 *Mart.* 1533, 1 *t. c.* 925.

C. VIII. Of him quha is civillie convict. GIF ony perſoun be civillie convict of wrangous ejectioun of ane uther furth of his landis or poſſeſſiounis, he ſall deſiſt and ceis fra the ſamin, and fra farder intrometting thairwith in all time cuming.

Item, He ſall reſtoir him quha is ejectit to his poſſeſſioun, to be peciabillie bruikit and joiſit be him, ay and quhill he be lauchfullie callit, and ordourlie put thairfra.

Item, He ſall reſtoir and deliver agane to him quha is ejectit all gudis ſpuilzeit or takin away be him, or utheris in his name, to him, and to his poſſeſſioun, als gude as thay wer the time thay wer takin, or to the avail and prices thairof; the quhilk ſould be referrit to the aith of him quha is ejectit and ſpuilzeit.

Item, He ſall refound, content and pay the damnages, coiſtis, skaithis and expenſis ſuſtenit be the ſaid perſewar the time of the ſaid ejectioun, and be reſſoun thairof; of the quhilk the avail and quantitie is likewayis referrit to the aith of the perſewar. 20 *Julij*, 1546, *et paſſim in regiſtro*, 1 *t. c.* 632.

Item, Gif ony man be convict of maſterful ejectioun, or violent occupatioun of ony landis, he ſall not onlie pay the maillis and dewties quhilkis the landis gevis zeirlie be tak and aſſedatioun, bot alſwa the proffitis quhilkis the landis may give, or micht have gevin, or have bene gottin of thame ony way, be him quha is ejectit, gif he had not bene ejectit and ſpuilzeit of his poſſeſſioun. 8 *Maij*, 1555, *Biſchop of* Murray *contra Erle of* Errol, 1 *t. c.* 1198.

Item,

Item, Gif ony perſoun be convict of ony ejectioun, or ſpuilzie, he aucht and ſould not onlie reſtoir the ſaidis gudis and geir, or the avail thairof, bot alſwa ſould content and pay to the perſewar the proffitis quhilk he micht have had, and quhilk he wantis throw the ſpuilzieing thairof, and that fra the day of the ſpoliatioun to the day of the raiſing of the ſummoundis, and not to the day of the geving of the decrete. 23 *Mart.* 1530, *Lord* Zeſter *contra Mr.* George Hay, 1 *t. c.* 314.

C. IX. The air of the ſpuliziear may not be perſewit criminallie.

THE air of ony perſoun committar of ony ſpuilzie may not be accuſit criminallie thairfoir, bot he may be callit and perſewit civillie, ſiclike as the principal ſpuilzear, his predeceſſour, micht have bene callit, albeit nane of the ſaidis ſpuilzeit gudis cum to his uſe or proffit, bot the ſamin, all and haill, wer diſponit be his predeceſſour. 5 *Julij*, 1552, *Laird of* Kinſaunis *contra the Laird of* Craigie, 2 *t. c.* 244.

C. X. Ane part of the libel beand provin, condemnatour ſould be gevin upon the heill.

GIF the perſewar in actioun of ſpuilzie preive ſufficientlie ony part of his libel, the Judge ſould give condemnatour upon the haill libel, albeit that everie thing ſpeciallie contenit in the libel be not ſufficientlie provin; for it is ſufficient to preive ony part thairof. 20 *Mart.* 1573, Robert Gordoun *contra Laird of* Melgund, 2 *t. c.* 354.

C. XI. Evidentis beand ſpuilzeit ſould be reſtorit unuſit, als gude as thay wer the time of the ſaid ſpoliatioun.

GIF ony man ſpuilzies evidentis pertening to ane uther man, and thairfoir is decernit to reſtoir the ſamin, he ſould re-deliver the ſamin unuſit, alterit or changit be him, and ſould repone the awner thairof in the ſamin place and eſtait that he was into the time of the ſaid ſpolziatioun; *nam reſtituere is intelligitur, qui ſimul et rem et cauſam reſtituit; non enim ſufficit corpus ipſum reſtitui, niſi reſtituatur et cauſa rei; id eſt, omnia ſpoliatus habeat, quæ habiturus erat, ſi non fuiſſet ſpoliatus.* 8 *Feb.* 1551. 1 *Maij*, 1552, Alexander Biſſet *of* Ardbeg *contra* Robert Drummond *of* Carnok, 1 *t. c.* 710.

Item, Writingis or evidentis beand ſpuilzeit be ony man, and the ſpuilzie beand provin, the ſamin, all and haill, ſould be reſtorit to the awiner thairof; and actioun ſould be reſervit anent the skaithis to be ſuſtenit be him throw the ſpoliatioun thairof, ſeing the ſamin dependis *ex futuro eventu.* 13 *Aug.* 1526, *Laird of* Orrok *contra Laird of* Balmuto, 1 *t. c.* 281.

C. XII. Of him quha labouris his land efter the ſpuilzie of his cattell.

OXIN, horſe, or cattell, beand ſpuilzeit, the awner thairof has na actioun for the proffitis of his landis, or for the skaith ſuſtenit be him in not manuring, labouring, teilling, or ſawing of his landis, throw the wanting of the ſaidis gudis ſpuilzeit, gif he, efter the committing of the ſaid ſpuilzie, labourit and manurit his landis in ſic maner as he was wont to do befoir the committing of the ſamin. 17 *Jan.* 1563, Elizabeth Huldie *contra* Thomas Steill, 1 *t. c.* 814.

Item, Gif ony perſoun, at ony time, quhen ane part of the cornis is ſawin, and ane uther not ſawin, violentlie ejectis ane uther furth of his landis, he may be callit and convict to content and pay the proffitis of all and haill the cornis, als weill ſawin a unſawin. 23 *Julij*, 1551, 2 *t. c.* 238.

IT

C. XIII. The pane of diſſaſine.

IT is to wit, that he quha is vanquiſht in this actioun and cauſe, quhidder he be perſewar or defendar, ſall be in the King's unlaw, as ſaid is: And mairover, gif the perſewar preivis ſufficientlie, conform to his libel, that he was diſſaiſit, the harmis and skaithis ſuſtenit be him thairthrow, ſall be referrit to his aith, and the quantitie thairof, beand ſwa taxt and modifyit, ſall be payit to him be the defendar. *Lib.* 3. *c. ult.*

Item, Gif ony perſoun is convict to have committit diſſaſine, be violence and armour, he may be wardit in his perſoun, and heavilie puniſt thairfoir at the King's will. *Stat.* 1. *Rob. Bruce, c.* 11. *Stat.* 2. *Rob. Bruce, c.* 13.

Item, Gif ony be convict to have committit diſſaſine or ſpuilzie, be reif and robberie of ony cattel or movabill gudis, he ſall pay to the perſewar his damnage and skaith ſuſtenit thairby, with the proffitis of the ſaid cattell and gudis, and mairover ſall be unlawit, quhidder he be preſent or abſent: And gif he be preſent, and may be apprehendit, he ſall be wardit and impriſonit in his perſoun. *Leg. Foreſt. c.* 75.

C. XIV. Anent divers perſounis committaris of ane ſpuilzie.

GIF ony perſoun havand aſſedatioun of ony ſteiding, or landis, contenand takkis for termis to rin, be diſturbit or moleſtit, ather himſelf, or his tenentis, in the peciabill bruiking of the ſamin, be ony uther makand convocatioun of the King's lieges to that effect; the doar and committar thairof, for the gathering of our ſoverane Lord's lieges in feir of weir, may be chargit to enter his perſoun in ward, thair to remane, upon his awin expenſis, quhill he be fred be the King; and alſwa aucht and fould reſtoir him and his tenentis, quha wer ejectit fra thair poſſeſſioun, to the ſamin agane, to be bruikit be thame as law will, for the termis to rin, quhilk ar contenit in his tak. 6 *Octob.* 1470, James Steuart *contra* Thomas Weir, 1 *t. c.* 9.

Item, Gif ony perſounis, houſhaldmen, or ſervandis, committis ony ſpuilzie, thair maſter may not be callit and convict for ſpuilzie thairfoir, except it be provin that the ſamin was done at his command, or that he foirſaw and knew the ſamin, and micht have ſtoppit, and ſtoppit it not; or that thair maſter knew the committing thairof, and ratifyit the ſamin, or zit knew not the ſamin, and nevertheleſs *ſpolium, ipſo ignorante factum, habuit ratum.* And it is not ſufficient to convict the maſter of ſpuilzie, albeit the gudis ſpuilzeit cum to his poſſeſſioun; *quia tunc ſolum tenetur quatenus ad eum pervenit.* 13 *Julij*, 1546.

Spuilzie of ſteilbow gudis.

Item, Gif a tenent or poſſeſſour of ony rowme ſet to him with ſteilbow gudis, beis ejectit or ſpuilzeit of his poſſeſſioun or gudis, the actioun of ſpuilzie concerning the poſſeſſioun and reſtitutioun thairof, pertenis to the ſaid tenent's maſter, bot the actioun of ſpuilzie concerning the ſteilbow gudis pertenis to the ſaid tenent allanerlie; becauſe the ſamin is his awin, be nature of the contract of ſteilbow, and was in his poſſeſſioun, and not in his maſter's. 19 *Feb.* 1549, *Laird of* Durie *contra* Stephan Dudingſtoun, 2 *t. c.* 200.

Gif divers and ſindrie perſounis commit ony ſpuilzie, *omnes initio tenentur in ſolidum*: Bot gif the ſamin be provin aganis thame all, ilk ane of thame ſould be condemnit efter the rate of the ſpuilzie: And gif the ſamin be provin contrare twa allanerlie, ilk ane of thame

thame ſould be condemnit in the half: And gif thay all and ſindrie be callit and perſewit thairfoir, and gif the ſamin be provin aganis ane allanerlie, he ſould be condemnit in the haill ſpuilzie. 29 *Julij*, 1544, Walter Zoung *contra Laird of* Ceſfurd, 2 *t. c.* 222.

C. XV. The defendar obtenand ane decrete of ſpuilzie, ſould be firſt ſatisfyit thairof, befoir he be compellit to anſwer to ony uther ſpuilzie.

ANE decrete of ſpuilzie or ejectioun beand obtenit aganis ony man, gif he aganis quhom the ſamin is obtenit raiſe or intent ony actioun or ſummoundis of ſpuilzie or ejectioun aganis the obtenar of the ſaid decrete, the defendar aucht and ſould on na wayis be compellit to anſwer to the ſamin, untill the time the decrete obtenit at his inſtance of befoir be fullilie ſatisfyit and compleitlie paid to him, 23 *Feb.* 1528, Johne Somerville *contra Lord* Somerville. Except the laſt ſummoundis be intentit for reductioun of the foirſaid decrete; in the quhilk cais he aucht and ſould be compellit to anſwer. 11 *Mart.* 1534, 1 *t. c.* 353.

C. XVI. Of him quha be boiſting and menaſſing layis waiſt another man's landis.

GIF ony man boiſtis ane uther man's tenentis, or ſtoppis and troublis thame, that throw juſt feir and dreadour thair landis lyis waiſt, he aucht and ſould content and pay to the ſaidis tenentis, the proffitis quhilkis thay micht have had of the ſaidis landis, and wantis throw his default and boiſting, and that during the haill ſpace that thay ſall happin to ly waiſt, for the cauſe foirſaid. 17 *Decemb.* 1505, *Mr.* William Lennox *contra* John Gordoun *of* Lochinvar, 1 *t. c.* 224.

C. XVII. Of divers perſounis committaris of nouvelle diſſaſine.

IT is ſtatute and ordanit, that becauſe in time bygane the actioun and cauſe of nouvelle diſſaſine micht be intentit and perſewit aganis na perſoun bot allanerlie contrare him quha was preſent poſſeſſour of the landis, gudis, or geir, havand poſſeſſioun thairof ather be nouvelle diſſaſine, wrang or injurie committit be himſelf, or be infeftment thairof gevin and grantit to him be utheris; that in all time cuming actioun of nouvelle diſſaſine may be intentit, als weill aganis the principal committar thairof as aganis the poſſeſſour: And gif divers and ſindrie perſounis committis ony ejectioun or ſpuilzie, and it happin that the principal committar thairof deceis, befoir he quha is ejectit or ſpuilzeit be reſtorit to his awin, it is leaſum to him to perſew all the reſt of the ſaidis perſounis, or ony ane of thame, quha was preſent at the committing of the ſaid ejectioun or ſpuilzie, for all and haill the damnage and skaith ſuſtenit be him ſen the time of the committing of the ſamin. *Stat.* 1. *Rob. Bruce, c.* 10.

C XVIII. Spuilzie committit aganis him quha is rebel, and at the King's horn.

GIF ony man's gudis and geir be violentlie ſpuilzeit fra him at ony time, he beand denuncit rebell, and put to the horn, he thairefter beand relaxit thairfra, has juſt actioun to perſew for the ſpuilzie committit aganis him in the time of his rebellioun. 19 *Junij*, 1554, *Laird of* Kinfaunis *contra Laird of* Craigie, 2 *t. c.* 252.

C. XIX. He quha removis willinglie, may not thairefter call for ejectioun.

GIF ony man beand warnit to remove fra ony landis or poſſeſſioun, and of his awin fré motive will removis himſelf, his familie, gudis and geir thairfra; the ſamin beand provin be witneſſis, or utherwayis, or zit gif he, in his maſter's court, renuncis all titill and richt that he has to the landis fra the quhilk he is warnit to remove; the ſamin beand provin be writ, he ſould never be heard efterwart

to call and perſew for ony ejectioun of him furth of the ſamin landis. 5 *Maij*, 1563, *Laird of* Kinhilt *contra Laird of* Knokdaw. 16 *Mart.* 1563, Trotter *contra* Edward Home, 1 *t. c.* 807.

C. XX. The wife may not perſew for the ſpuilzie committit aganis the huſband.

SPUILZIE and ejectioun beand committit aganis ane man, his wife, efter his deceis, has na actioun, as wife, to perſew thairfoir: And ſiclike, ſcho has na actioun, gif hir husband, befoir his deceis, and efter his ejectioun or ſpoliatioun, ſauld and diſponit his richt and titill of the landis or gudis ſpuilzeit, and tuke gude deid thairfoir fra the committar of the ſaid ejectioun or ſpoliatioun, or fra ony uther in his name. 26 *Julij*, 1541, Anabell Cuninghame *contra* John Paterſone, 1 *t. c.* 528.

C. XXI. Of ejectioun and ſpuilzie committit in widowis dowries.

IT is ſtatute and ordanit, that gif ony perſoun ejectis widowis furth of thair dowries, efter the deceis of thair husbandis, or refuſis to give to thame the ſamin, furth of the landis and tenementis in the quhilkis thair husbandis deceiſt laſt veſt and ſaiſit, and is convict be the decrete of ane Judge to have done wrang heiranent, thay ſall content and pay to the ſaidis widowis the damnage and skaith ſuſtenit be thame thairthrow, *viz.* the valour and proffit of thair dowrie pertening to thame the time of the deceis of thair husbandis, unto the time that thay wer kend and ſervit to the dowrie, togidder with the valour and proffit thairof, fra the time of thair ſervice to thair dowrie, unto the time of the intenting of the ſummoundis: And mairover, the ſaid perſounis quhilkis ar decernit to have done wrang in the premiſſis, ſall thairby fall and remane in the King's will and unlaw. *Rob.* III. *c.* 22.

C. XXII. Of ane titill quhilk happinis to be reducit.

GIF ony man have landis in tak and aſſedatioun, or utherwayis annalzeit to him, or diſponit be ony titill, and thairefter he intromit with the gudis and proffitis thairof; gif he happinis to be perſewit thairefter, and his titill reducit, and declarit null, zit nevertheleſs he ſall not be haldin and convict criminallie nor civillie in ſpuilzie, bot onlie to reſtoir the gudis and geir intromettit with and up-takin be him; becauſe he tuke the ſaidis gudis be ane pretendit titill, and colourit richt, the quhilk at that time not beand declarit null, aucht and ſould ſalve him fra all crime of ſpuilzie, albeit the ſamin may not ſalve him fra wrang, 24 *Mart.* 1541, Johne Miller *contra Laird of* Cullernie. And zit, gif ony man is in poſſeſſioun of ony landis, be virtue of ony colourit titill, ſa lang as his titill ſtandis unreducit, he committis na wrang in the up-taking of the maillis and dewties of the ſaidis landis. 13 *Julij*, 1542, Jonet Stradauchlie *contra Laird of* Moncreif. 18 *Feb.* 1494, *Biſchop of* Aberdene *contra* David Lindſay. 4 *Jan.* 1529, *Tenentis of* Tullibodie *contra* Ninian Seytoun, 1 *t. c.* 50.

C. XXIII. Of a titill ſupervenient efter the committing of the ſpuilzie.

GIF ony man committis ejectioun or ſpuilzie aganis ony tenentis, and thairefter obtenis richt and titill fra the Lord of the ground, or fra ony uther havand powar to give the ſamin, to the landis out of the quhilkis the tenentis wer ejectit, or to the gudis ſpuilzeit, the ſamin titill and richt ſupervenient is not ſufficient to ſalve him fra the ſaid ejectioun or ſpuilzie; becauſe the ſpuilzear may not, be ſic titill and richt, be callit or underſtuid to be juſt poſſeſſour, except

cept he quha was ejectit or ſpuilzeit be firſt reſtorit to his poſſeſſioun. 11 *Feb.* 1541, Somerville *contra* Hamiltoun, 2 *t. c.* 56.

C. XXIV. Of ane deid done be virtue of our ſoverane Lord's letteris.

GIF ony man be perſewit for ſpuilzie or ejectioun, he aucht and ſould be aſſoilzeit thairfra, gif he did nathing thairintill bot be virtue of our ſoverane Lord's letteris. 20 *Feb.* 1528, Thomas Scot *contra* Thomas Balfour *of* Burlie, 1 *t. c.* 305.

Item, Gif ony man, beand callit for ſpuilzie of ony gudis and geir, alledgis and preivis that he poindit the ſamin, as Officiar, or at the command of the Lord of the ground, for the maillis and dewties thairof, he aucht and ſould be aſſoilzeit anent all ſpoliatioun, except he quha is poindit alledge and preive, that he had maid full payment of the ſaidis maillis befoir the time of the poinding. 20 *Mart.* 1533, Margaret Home *contra* Thomas Porteous, 1 *t. c.* 417.

Exceptiounis aganis ſpuilzie.

Item, Gif ony man, beand perſewit for ſpuilzie of ony gudis and geir, alledgis that he lauchfullie poindit the ſaidis gudis, and thairfoir did na wrang nor ſpuilzie, the ſamin ſould be admittit to his probatioun. 4 *Feb.* 1534, *Tenentis of* Strathurd *contra* Ninian Seytoun, 1 *t. c.* 640.

Item, Gif ony man intromettit with ony gudis or geir be ane juſt richt or titill, he may not be callit for ſpuilzie or wrangous intromiſſioun thairwith; as gif the geir pertenit to him be virtue of eſchete juſtlie gevin and diſponit to him. 1 *Junij*, 1549.

Item, Gif he intromettit with ony gudis or geir, and beſtowit thame to the utilitie and proffit of the perſewar in his abſence, as in the reparatioun of his houſis, redemptioun of his landis, or utherwayis. 4 *Junij*, 1549.

Item, Gif he intromettit thairwith be virtue of tak and aſſedatioun, contenand zeiris and termis to rin. 17 *Junij*, 1550.

Item, Gif he poindit thame ordourlie, for fulfilling of ane decrete gevin in his favouris. 8 *Feb.* 1551.

Item, Gif the gudis be poindit and appryſit be the Schiref, for the caſtel-wardis auchtand furth of ony landis ſubject to the payment thairof, of the quhilk the Schiref is bund and obliſt to mak zeirlie compt in the chekkar. 7 *Junij*, 1553.

Item, Gif the gudis or the geir be ordourlie poindit and compriſit be the Lord of the ground, for his maillis and dewties auchtand to him be his tenent, awner of the ſaidis gudis. 28 *Junij*, 1553; 1 *t. c.* 1095.

Item, Gif ony man, be virtue of ane decrete and rolment of court, poind and diſtreinzie ane uther man's gudis or geir, and it happin thairefter the ſaid decrete, or rolment of court, to be reducit, with all that followit thairupon, he quha poindit may not be callit for violent ſpoliatioun of the ſaidis gudis poindit be him. 13 *Junij*, 1554, 1 *t. c.* 1175.

Item, Gif ony perſoun obtenis the eſchete of baſtardrie, with the Lordis letteris, conform to his gift, to cauſe him be anſwerit conform thairto, and intromettis with the ſaidis gudis and geir alledgit pertening to the ſaid umquhile baſtard, he may be callit and convict for ſpuilzie thairof, at the inſtance of the ſaid umquhile baſtard's executouris, gif thay ſufficientlie preive that the baſtard was rehabilitat befoir his deceis; becauſe, albeit he had ane colourit titill, and the

the Lord's letteris, nevertheleſs he ſould have callit the poſſeſſouris of the ſaidis gudis and geir to have heard the ſamin decernit to pertene to him be virtue of his gift. 21 *Feb.* 1542, 2 *t. c.* 135.

C. XXV. He quha is in poſſeſſioun of a part, is underſtuid to be poſſeſſour of the haill.

ANE beand in poſſeſſioun of ony part of teindis, be virtue of ony richt or titill quhilk he has to the haill, may call and perſew for ſpuilzie of the haill; becauſe poſſeſſioun of ane part in this cais inducis poſſeſſioun of the haill. 21 *Jan.* 1549, *Laird of* Merchingſtoun *contra* Naper *of* Wrichtishouſis. 2 *t. c.* 192.

C. XXVI. Of the defendar alledgeand him to be in peciabill poſſeſſioun.

IN actioun of ſpuilzie or ejectioun, perſewit be ony perſoun alledgeand him to be wrangouſlie ejectit, and ſpuilzeit of his poſſeſſioun at ane certane day, he beand then, like as he was of befoir, be the ſpace of certane dayis, in continual and peciabill poſſeſſioun thairof; gif the defendar alledge, that befoir the time libelled he was in continual and peciabill poſſeſſioun of the ſaidis landis, and that at the time libellit he was troublit and moleſtit be the perſewar, and thairfoir all that he did was done for defens and maintenance of his poſſeſſioun, the quhilk he micht defend juſtlie, and of the law; the ſaid exceptioun is relevant; and ſuppois it appeir to be contrare to the law, nevertheleſs it ſould be admittit to probatioun. 22 *Julij*, 1546, 2 *t. c.* 162.

C. XXVII. He quha makis lauchful reſtitutioun of the gudis, may not be callit for ſpuilzie.

GIF ony man be perſewit for ſpoliatioun and away-taking of ony gudis and geir, he aucht and ſould be aſſoilzeit thairfra, gif he, or ony in his name, reſtorit reallie, and with effect, efter the committing of the ſpuilzie, and befoir the intenting of the ſummoundis, the ſamin gudis and geir to the awner thairof, or to his wife and ſervandis, als gude as thay wer the time thay wer takin away. 16 *Julij*, 1532, Umphra Rollok *contra* John Striviling *of* Keir. 17 *Jan.* 1533, 1 *t. c.* 450.

Item, Gif ony gudis or geir, quhilkis ar alledgit ſpuilzeit, be reſtorit agane to the poſſeſſioun of him fra quhom thay wer takin, and to the ground of the landis fra the quhilk thay wer takin away, als gude as thay wer the time of the alledgit ſpoliatioun thairof, the ſamin reſtitutioun is ſufficient, for evacuatioun of the ſpuilzie, albeit the ſamin be maid twentie ane dayis efter the ſpoliatioun. 7 *Junij*, 1564, Robert Henriſone *contra* Johne Ker, 1 *t. c.* 1313.

Item, Gudis or geir ſpuilzeit or tane away fra ony man, and reſtorit and deliverit agane, gif thairefter the ſamin be tane away be him quha tuke thame of befoir, the ſamin gudis and geir ar not underſtuid of the law to be reallie and lauchfullie reſtorit. 27 *Junij*, 1534, 2 *t. c.* 984.

C. XXVIII. He quha defendis his awin or freindis poſſeſſioun may not be callit for ſpuilzie.

ANE beand in actual and real poſſeſſioun of ony landis, or uther thing, gif ane uther man preſſis and attemptis to put him furth, be way of deid, of his poſſeſſioun, he may defend his awin richt and poſſeſſioun, and reſiſt the force and violence of the invader, but ony danger or peril of ejectioun, ſpeciallie at the time of the invaſion; *quia vim vi incontinenti repellere licet, cum moderamine inculpatæ tutelæ*, 29 *Julij*, 1540. And ſiclike, it is leaſum to ony man to aſſiſt his freind, for maintenance and defence of his freind's richt, and

and poſſeſſioun of his gudis or geir. 21 *Mart.* 1549, *Priour of* Pluſcarden *contra* Johne Grant-roy, 1 *t. c.* 1044.

C. XXIX. Anent exceptioun of propertie.

IT is ſufficient, in actiounis of ſpuilzie, to the perſewar to preive the poſſeſſioun and the ejectioun: And gif the defendar alledge or propone ane exceptioun of propertie, *viz.* that the ſamin gudis or geir, alledgit ſpuilzeit, be ane juſt titill and richt pertenit to him as his awin proper gudis and geir, the time of the ſpoilziatioun; the ſamin exceptioun aucht and ſould be repellit. 25 *Maij*, 1549, 1 *t. c.* 209.

C. XXX. He quha proponis ane peremptour exceptioun, grantis the libel.

ITEM, In actiounis of ſpuilzie or ejectioun, gif the defendar uſe and propone ane peremptour exceptioun, that he intromettit with the landis, gudis and geir alledgit ſpuilzeit be him, be ane juſt richt and titill, and it happin the ſamin exceptioun to be repellit be the Judge, the avail and quantitie of the ſpuilzie may be referrit to the perſewar's aith; becauſe the defendar, be proponing of that exceptioun, grantit the committing of the ſpuilzie and ejectioun. 6 *et* 16 *Junij*, 1547, John Cultar *contra* John Logan, 1 *t. c.* 653.

C. XXXI. Diſcharge gevin to ony of the complices, releivis the haill.

ANE ſpuilzie of gudis and geir beand committit be divers and ſindrie perſounis, gif he aganis quhom the ſamin is committit, his airis or ſucceſſouris, or ony utheris in thair name, havand thair powar thairto, quyte clame and diſcharge ony ane perſoun committar thairof, ather principal or complices, for ony cauſe properlie pertening to him quha is diſchargit, or for ony uther cauſe, all and hailll the remanent perſounis, committaris of the ſamin ſpuilzie, on na wayis may be callit or perſewit in ony time cuming thairfoir. 14 *Mart.* 1533, Patrik Mure *of* Arnotſtoun *contra* Johne Somerville *of* Cambuſnethan. 22 *Junij*, 1554, *Laird of* Kinfaunis *contra* John Barclay *and utheris*, 1 *t. c.* 453.

C. XXXII. He quha gevis ane diſcharge, may not thairefter call for ſpuilzie.

GIF ony perſoun, be force or violence, or be ony uther way, maſterfullie and wrangouſlie invadis, takis and occupyis ane houſe, bigging, rowme, or poſſeſſioun, pertening to ane uther, and thairefter reſtoris and deliveris the ſamin, and the awner thairof, the time of the reſtitutioun, beand at his awin libertie and fredome, renunce, quyte clame, and diſcharge him, his ſervandis, complices, and partakeris of all actiounis of wrang or ſpuilzie quhilk may be intentit aganis him, or his complices, for ony gudis or geir takin furth of his ſaidis houſ, bigging, rowme, or poſſeſſioun, and intromettit with be thame, the ſamin diſcharge is ſufficient of the law to ſtop the maker thairof, to call and perſew in ony time cuming for ſpuilzie, or ony uther wrang, done befoir the geving of the ſaid diſcharge. *Ult. Junij*, 1565, Elizabeth Reburne *contra Laird of* Haddoun, 1 *t. c.* 883.

C. XXXIII. Of ane compeirand for his interes.

IN actioun of ejectioun and ſpuilzie perſewit betwix twa parties, gif ane thrid perſoun compeiris and alledgis the landis to pertene to him, and deſiris to be admittit in the cauſe for his interes, he aucht not nor ſould not be admittit; becauſe he, be diſputatioun upon the propertie and ground richt, may not ſtop the actioun of ſpuilzie or

ejectioun. 12 *Feb.* 1541, *Burgh of* Selkirk *contra tenentis of* Kelſo, 2 *t. c.* 57.

C. XXXIV. Anent ſpoliatioun of cattel, and diſcharge thairof.

GIF ony man alledgis himſelf, his ſervandis, gudis and cattel, to be violentlie ejectit furth of his landis be ane uther, he may at na time cuming call or perſew for the ejectioun, he puttand on agane, be himſelf, or utheris in his name, his cattel or gudis upon the ground, and cauſand keip and paſture thame thair, as he was wont to do of befoir; or zit gif he, incontinent efter the alledgit ejectioun, enterit agane to the poſſeſſioun of the faidis landis, and occupyit, labourit and manurit the ſamin be himſelf, or utheris in his name; becauſe he ſwa doand *tacitè* remittit and diſchargit all actioun of ejectioun, enterand agane to the faidis landis, and occupyand, labourand, and manurand the ſamin, be himſelf, and utheris in his name. 28 *Junij*, 1558, *Mr.* Henrie Lauder *contra* William Adamſone. 6 *Mart.* 1559, Johne Kello *contra* Criſtiane Dalzell, 1 *t. c.* 762.

C. XXXV. Of exceptiounis in actiounis and cauſis of diſſaſine.

IN actiounis or cauſis of ejectioun or ſpuilzie, the libel or clame is irrelevant, and caſſabill, gif the landis, tenementis, or dewties thairof, ar not expreſſit in the richt maner, or be the richt namis. *Item*, Gif the place quhairin the ſaidis landis or tenementis ar ſituat is not expremit.

Item, Gif thair be twa or ma perſounis portioneris of the land or tenement, and all not namit togidder in the libel or clame; for the ſamin is of nane avail, gif ony of thame be pretermittit thairin: And gif ony land movis of the wife's ſide, and hir name is not ſpecifyit in the libel or clame, the ſamin has na virtue nor ſtrenth. *Lib.* 4. *c.* 26. *Aſſiſ. Reg. David. c. ult.*

Item, Gif twa or ma Judges ar conſtitute in the cauſe, and ony of thame happinis to be abſent, the defendar may not be compellit to mak anſwer befoir the reſt, except thay wer conſtitute conjunctlie and ſeverallie.

Item, Gif the Judge ſubſtitute ony in his place, not havand powar to do the ſamin; or gif he be ſuſpect or recuſabill, and the ſamin appeareth manifeſtlie, the defendar may not be compellit to mak anſwer befoir the ſaid depute or Judge. *Aſſiſ. Reg. David. c. ult.*

Item, The libel and clame is inept, gif thair be divers and ſindrie perſounis committaris of the ejectioun, quha occupyis the landis *pro diviſo*, be certane aikeris, rudis, or uther meaſouris, and the perſewar libel generallie, not ſpecifyand the meaſour and quantitie occupyit be ilk ane of the defendaris. *De jud. c.* 107.

C. XXXVI. It is leaſum to ony man to aſſiſt his freind in defence of his richt.

GIF ony man helpis or aſſiſtis ony freind or kinniſman in maintening of his juſt richt and titill aganis ane uther, as ingaddering or leiding of his teindis, or in the keiping of the poſſeſſioun of his landis and geir, he may not be callit for wrang thairfoir. 8 *Junij*, 1562, John Stewart *contra* John Middlemiſt. *Ult. Julij*, 1562, Thomas Laird *contra Schiref of* Perth, 1 *t. c.* 1272.

C. XXXVII. Anent ane ſpuilzie perſewit as committit at ane

GIF ony perſoun perſewis in judgment ane uther perſoun, for ſpuilzie of ony gudis or geir, done or committit upon ane certane day, he, nor his complices, nather ony havand ſpecial interes, ſould

ſould be heard efterwart to call and perſew the ſamin perſoun quha was perſewit of befoir for the ſamin ſpuilzie, as done and committit upon ane uther day than was befoir libellit. 26 *Junij*, 1563, *The* Engliſch *merchandis of* Quhitbie *contra Erle* Bothwille *and utheris*, 1 *t. c.* 815. time, and thairefter perſewit as done at ane uther time.

IN actiounis of ſpuilzie the defendar ſould not be heard, alledge- and, be way of exceptioun, that the perſewar ſpuilzeit the ſamin gudis and geir fra him befoir the time of committing of the alledgit ſpuilzie done be him aganis the perſewar; *quia exceptio ſpolii prioris, ſuper eadem re, non repellit actorem de ſpolio agentem.* 2 *Mart.* 1542, Douglas *contra* Boig, 2 *t. c.* 137. C. XXXVIII. Anent exceptioun of ſpuilzie objectit be the defendar.

GUDIS and geir, alledgit ſpuilzeit, and offerit agane to the awner, or ony in his name, or to the ground quhairfra thay wer takin, aucht and ſould be all and haill offerit; becauſe ane offer beand maid of ony part thairof allanerlie, he to quhom the ſaid offer is maid is not bund and oblift to reſſave the ſamin, and, notwithſtanding the ſaid offer, the maker thairof may be callit for ſpuilzie of all and haill the ſaidis gudis and geir. 24 *Martij*, 1541, John Miller *contra Laird of* Cullernie, 2 *t. c.* 86. C. XXXIX. He quha offeris agane the gudis ſpuilzeit, ſould offer thame altogidder.

Item, Gif ony man, callit and perſewit for ſpuilzie of ony gudis and geir, alledgis and preivis that he lauchfullie reſtorit the ſaidis gudis and geir efter the ſpolziatioun thairof, he aucht and ſould be aſſoilzeit fra the ſaid ſpuilzie, albeit it be replyit and anſwerit, that he, incontinent efter the ſaid ſpolziatioun, intromettit agane with the ſaidis gudis; becauſe *per reſtitutionem ſemel factam, ſpolium præcedens exſtinguitur.* 6 *Maij*, 1542, *Laird of* Alter *contra* Johne Grant, 2 *t. c.* 90.

GIF ony man ſtoppis or makis impediment to ony eccleſiaſtical perſoun, his factour, or ſervitouris, in gaddering, collecting, or leiding of his teindis, hoiſting that he ſall brek thair heidis, and thay deſiſt not thairfra, quhairthrow thay, throw juſt feir and dreidour, may not intromet thairwith; he may be callit and convict for ſpuilzie of the ſaidis teindis; and mairover may be condemnit to content and pay to the awner thairof the damnage and skaith quhilk he has ſuſtenit throw the making of impediment to him, and his factour in the gaddering of the ſaidis tendis. *Pen. Novemb.* 1537, *Mr.* James Brown *Perſoun of* Fettereſſo, *contra* Andro Jolie, 1 *t. c.* 490. C. XL. He quha makis impediment in the gaddering of teindis, may be callit for ſpuilzie.

GIF ane decrete of ejectioun or ſpuilzie be gevin aganis ony perſoun, he may call and perſew for reductioun thairof, albeit he has not fulfillit nor obeyit the ſamin, nor zit maid reſtitutioun, conform thairto, of the gudis and geir ſpuilzeit be him, to the obtenar of the decrete; becauſe the commoun rule, *ſpoliatus ante omnia eſt reſtituendus*, ſtoppis him not to ſeik reductioun of the ſaid decrete, and has onlie place, *quando agitur ſuper proprietate rei ſpoliatæ, vel de alia re, agendo principaliter; et non quando agitur per viam reductionis, ad retractandam ſententiam ſuper ſpolio contra aliquem latam*: And zit nevertheleſs, the intenting or dependence of the ſaid reductioun ſould not ſtop the obtenar of the ſaid decrete, to put the C. XLI. Reductioun of a decrete of ſpuilzie.

the ſamin to farder executioun, during the time of the ſaid dependence. 9 *Mart.* 1541, Johne Haliburtoun *contra* Helene Rutherfurd, 2 *t. c.* 74.

C. XLII. Gif the Officiar poind not the ſpuilzear's proper gudis, he may be callit for ſpuilzie.

ANE decrete beand obtenit aganis ane perſoun, with letteris of poinding conform thairto, gif in the time of the poinding of the gudis and geir, ony perſoun, aganis quhom the ſaid decrete is not gevin, compeir befoir the Officiar, and offer him to preive and mak faith, that the ſamin gudis ar his awin proper gudis, and in na way is pertenis to him aganis quhom the ſaid decrete is gevin, and nevertheleſs the Officiar procedis in poinding of the ſaidis gudis, and thairfoir be callit thairefter for ſpuilzie and wrangous intromiſſioun with the ſamin, gif the Officiar alledge that the ſamin gudis pertenit to him aganis quhom the decrete was gevin, as his awin proper gudis, and wer in his poſſeſſioun be ane certane ſpace, befoir he poindit the ſamin, and in the time of the poinding thairof; the ſamin alledgeance is ſufficient to ſalve him fra ſpuilzie, and aucht and ſould be admittit to his probatioun. 17 *Feb.* 1532, Elizabeth Hepburn *contra* Gilbert Wauchop, 1 *t. c.* 472.

Anent inhibitioun.

C. I. Inhibitioun ſould not be grantit aganis ane honourabill perſoun, without a ſufficient cauſe.

LETTERIS of inhibitioun may not be gevin aganis ony Erle, Lord or Baron, be the Lordis, without ane ſufficient and juſt cauſe, becauſe the ſamin is hurtful to mens fame and honour: And mairover, na perſoun ſould be ſtoppit in the adminiſtratioun of his gudis and geir, without ane lauchful and ſufficient cauſe. 11 *Julij*, 1543, Johne Maxwell *contra Laird of* Teling. 12 *Julij*, 1543, *The Quene* contra *Erle of* Craufurd, 2 *t. c.* 182.

C. II. Anent inhibitioun aganis a poſſeſſour of teindis.

GIF ony man intromettis with teindis, he may not be callit nor convict for ſpuilzie thairof, gif thair was na lauchful inhibitioun maid to him in the contrare, befoir the time of his intromiſſioun. 26 *Julij*, 1558, Margaret Erskine *contra Laird of* Trabroun, 1 *t. c.* 1220. Bot ſould be decernit to pay allanerlie that quhilk he was wont to pay in the zeiris of befoir, quhen na inhibitioun was ſervit or maid aganis him, 8 *Julij*, 1564, *Biſchop of* Dumblane *contra* Malcolm Drummound, 1 *t. c.* 1319. And gif ony perſoun havand richt and titill to ony teindis, lauchfullie executis inhibitioun, befoir the leiding of the ſaidis teindis, aganis the tenentis occupyaris of the ground, he may call and perſew the intromettaris with the ſaidis teindis for ſpuilzie thairof, gif thay intromettit thairwith without his licence or tolerance, efter the executioun of the ſaid inhibitioun. 22 *Novemb.* 1555, *Sir* William Ballingall *contra Mr.* William Arthur, 1 *t. c.* 746.

C. III. Of payment maid befoir inhibitioun.

GIF tenentis or labouraris of the ground mak payment of ony part of thair teindis to the takkiſmen, or fermoraris thairof, and thairefter the Abbot put inhibitioun to the tenentis or takkiſmen, and call him or thame for ſpuilzie of the teindis, thay ſould not be decernit as ſpuilzearis for ſa mekil as was payit befoir the inhibitioun; be-

cauſe

cauſe thay maid payment thairof, *bona fide; et tempore inhibitionis res non erat integra, quum facta fuit ſolutio ante inhibitionem: et inhibitio non extenditur ad præterita. Ult. Julij*, 1550, 1 *t. c.* 1121.

C. IV. Of payment maid efter inhibitioun.

GIF ony man makis payment of his teindis to ane uther, efter lauchful inhibitioun maid to him in the contrare, the ſamin payment is underſtuid to be maid *mala fide*, and thairfoir releivis not the maker thairof at his handis in quhais name the inhibitioun was maid. 6 *Julij*, 1568, Alexander Sinclare *contra Mr.* George Hepburn, 1 *t. c.* 1356.

C. V. Inhibitioun ſervis onlie for ane zeir.

GIF the tenentis and occupyaris of the ground, efter inhibitioun dewlie maid aganis thame, intromettis with thair teindis, not onlie of the zeir's crop, in the quhilk the ſaid inhibitioun was maid, bot alſwa of ane zeir or zeiris thairefter, he quha maid the inhibitioun cannot perſew for ſpuilzie of the teindis intromettit with, except of the zeir's crope in the quhilk the ſamin inhibitioun is maid; becauſe the ſaid inhibitioun ſervis allanerlie for ane zeir, and puttis not the tenentis nor intromettouris *in mala fide*, to infer and induce ſpuilzie aganis thame of the remanent zeiris. 24 *Julij*, 1564, *Laird of* Findlater *contra* Adam Gordoun, 1 *t. c.* 1338.

Anent ſchawing of haldingis.

C. I. Divers maneris of halding.

ALL landis halding of the King, utherwayis nor in fré burgage, ar haldin in blanche ferm, or in few ferm, or be ſervice of ward and releif, or in name of pure and fré almonis. *De quatuor mod. ten. ter. de Rege.*

Item, Landis haldin be ony man, of ony ſuperiour or over-lord, *reddendo ſervitia debita et conſueta*, the ſamin is underſtuid to be haldin be ſervice of ward and releif, except in his infeftment relatioun be maid *ad formam et tenorem antiquæ cartæ*; for in this cais the maner of halding of the ſaidis landis ſould be reulit and underſtuid, conform to the halding contenit in the auld chartour, gif ony be. 6 *Feb.* 1505, *The King* contra *Schir* Johne Hay, 1 *t. c.* 136.

C. II. Quhat the tenent ſould ſchaw to his ſuperiour.

THE ſuperiour may charge and compell his fré tenent to ſchaw him his principal chartour and infeftment, ſwa that he may underſtand thairby the contentis thairof, and quhat is the zeirlie maill and dewtie aucht to him thairfoir, and how and in quhat maner the landis ar haldin of him, 23 *Junij*, 1558, Huntlie *contra* William Gordoun, 1 *t. c.* 760. And mairover, the fré tenent aucht and ſould give the autentique copie of ſa mekil of the chartour and infeftment as is neceſſar to have, *viz.* the particular namis of all and haill the landis, the name of the ſchiref dome or place quhair thay ly, the maner of halding, quhom of and how the ſamin ar haldin, the maillis and dewties quhilkis ſould be zeirlie paid thairfoir, and at quhat termis in the zeir the ſamin ſould be paid. 14 *April.* 1559, James *Lord* Roſs *contra* Hew Ralſtoun. 14 *April*, 1559, *Laird of* Glenhegies *contra Laird of* Drumquhaſſil, 1 *t. c.* 770.

C. III. The ſuperiour ſould preive that he is ſuperiour.

THE ſuperiour, quha callis and perſewis his vaſſal, for ſchawing and producing of his infeftment, has na richt nor titill to do the ſamin, except he ſchaw and verifie that he is ſaiſit in the ſuperioritie of the landis pertening to his vaſſal in propertie. 6 *Junij*, 1575, *Lord* Somerville *contra* Cambuſnethan, 2 *t. c.* 373.

C. IV. To quhom the halding ſould be ſchawin.

GIF ony perſoun gevis infeftment of landis heritabillie, or for lifetime, to be haldin of him and his airis, he may not compel him to quhom he has gevin infeftment, his airis nor ſucceſſouris, to ſchaw him thair chartour, or maner of halding, induring the time of the ſaid over-lord's lifetime; bot, efter his deceis, his airis and ſucceſſouris may compel him quha is infeft, or his ſucceſſouris, to ſchaw the ſamin. *P.* 836. *Ex lib. Scon.*

C. V. How oft the maner of halding ſould be ſchawin.

NA fré tenent or vaſſal, beand ſummoundit and chargit be his over-lord, may be compellit to ſchaw his chartour, and maner of halding, bot anis, during the ſaid over-lord's lifetime: And quhen the over-lord has ſene the ſamin, and red it in plane court, he aucht to re-deliver the ſamin in court without delay, and may not tak ony copie thairof. *Mod. ten. cur. c.* 34. *Quon. attach. c.* 16.

C. VI. Of ane tenent quha has a chartour, or has not a chartour, or denyis the ſamin.

GIF the tenent quha is ſummoundit be his over-lord to ſchaw his halding, appeiris in the court, the over-lord may deſire to ſchaw his chartour and infeftment of his landis, the quhilk he ſould ſchaw, gif he has the ſamin: And gif it be fund that he has occupyit the landis utherwayis than the chartour proportis, he may be decernit be dome of court to have tint and foirfaultit the ſaidis landis. And gif the tenent has ane chartour, and hydis and conceilis the ſamin, and is convict be ane aſſiſe to have ane chartour, he fall in like maner tyne and foirfault the landis; for it is na reſſoun that he ſould bruik ony commoditie be that chartour quhilk he denyis: And gif the tenent alledge he ſaw ane chartour of that land, quhilk he has not, then he ſould vouch it, and how he ſould hald that land efter the tenour of the tint chartour: And gif it be fund utherwayis be ane aſſiſe than he vouchis, he ſall tine that land: And gif the tenent alledgis that he has na chartour, nor ever had nor ſaw ane chartour, and gif he ſayis the ſamin trewlie, without fraud or guyle, not conceiland the chartour, then the over-lord ſall inquire be ane aſſiſe how the tenent ſould hald the land; and the determinatioun of that aſſiſe ſall ſtand to the tenent inſteid of ane chartour: And gif it be fund efterwart that he has occupyit the landis utherwayis than the aſſiſe decernit him to hald, in that cais he ſall tine the ſaidis landis, the quhilk he ſould have occupyit efter the tenour of his chartour, ſeing the determinatioun of the ſaid aſſiſe ſtandis in place of his chartour, *ubi de cauſa feudi agitur.*

Item, Gif ony perſoun be callit and perſewit for productioun and ſchawing of ane tak, aſſedatioun, inſtrument, or ony uther evident; and in cais the ſamin (he denyand the havand thairof, it beand referrit be the perſewar to his aith, and he ſweir and mak faith in judgment that he never heird, had, wiſt, nor knew of ony ſic writ or evident as is denyit in maner foirſaid) be efterwart fund, recoverit, and producit; he quha denyit the ſamin be his bodilie aith of befoir, ſould not report ony commoditie thairby, nather can he pretend

tend ony richt, titill, or interes thairto, except he verifie ſufficientlie that the ſamin came to his knawledge efter the denying thairof. 9 *Decemb.* 1563, *Sir* John Ogilvie *of* Innerquharitie *contra* John Ogilvie, 1 *t. c.* 825.

C. VII. The form and maner of proceſs.

GIF the over-lord willis and deſiris to ſé the chartour and halding of his tenent and vaſſal, he may call and perſew his tenent in his awin court to do the ſamin; and to that effect may direct his precept, under his ſeill, to his Serjand of the baronie, chargeand and commandand him that he paſs, bot delay, to the chemiſe of the landis or tenandries, and thair lauchfullie ſummound, befoir ſufficient witneſſis, ſic ane man, quha callis him tenent of ſic landis and tenandrie, to compeir at the ſaid chemiſe, within the ſaid baronie, befoir him, as over-lord, in his court thair to be haldin ſic ane day, for to ſchaw him his halding, his chartour and evidentis, gif he ony has; how, and be quhat titill and richt, and for quhat ſervice he clamis to hald ſic landis, as tenandrie of him his overlord, and to do him thairfoir ſic ſervice as he aucht to do, and the law willis, and uſe and cuſtume is within the realme, in ſic caiſis.

Executioun.

The preceptis beand deliverit to the Serjand, he ſall incontinent paſs, with twa or thré ſufficient witneſſis with him, to the chemiſe of the ſaid tenandrie, and thair, in the preſence of the witneſſis, he ſall ſchaw his preceptis, and cauſe the ſamin be red, and ſummound the ſaid tenent conform to the tenour thairof; the quhilk beand done, he ſall cauſe write the record of the ſummoundis, and the namis of his witneſſis, and keip the ſamin to the court day, and bring it with him to the court.

The firſt court.

Quhen the court day cumis, the over-lord ſall paſs to the ſaid chemiſe, and cauſe the court to be affirmit, and the ſuitis to be callit. The quhilk beand done, he ſall ask at his Serjand, gif he has ſummoundit the tenent or vaſſal conform to his precept direct to him of beſoir to that effect: And gif the Serjand affirmis the ſamin to be lauchfullie done, he ſall deliver his precept, with the record or indorſatioun thairof, to the Clerk; the quhilk beand red be him, the Serjand's witneſſis ſall ſweir the greit aith, the haly dome tuichit, that thay preſent wer, heard, ſaw, and in witneſſis wer takin the ſaid day and place, quhen and quhair the ſaid Serjand ſummoundit the ſaid tenent, in form and maner as his record proportis: Thairefter the Serjand, at command of the over-lord, ſall call the tenent, anis, twiſe, thriſe, to compeir and anſwer to the ſummoundis maid upon him; then, he beand oftimes callit, and not compeirand, and the time of day bidden, the over-lord ſall deſire the court to decern the ſaid tenent to be in the fault of the court for default of his compeirance, and how the proceſs ſould proceid, and he depairt at that time as the firſt day: Then the court counſallit and adviſit, a ſuitar of it, be thair informatioun, ſall ſay in this maner: This court is counſallit and adviſit, that ſic ane man, tenent and vaſſal to ſic ane man, is in default for his abſence this day; and that the Serjand, with his witneſſis, paſs to the ſaid chemiſe, and thair mak new ſummoundis to the ſaid tenent, to compeir at the nixt court to be haldin heir in maner and form abone expremit, as for the ſecund day; and thair to tak a diſtreſs, and let the ſamin to borgh, gif it be askit, to be enterit at the nixt court, and to depairt thair-

thairfra, as law will; the quhilk court, God-willing, ſall be haldin ſic ane day of the moneth nixt to cum, efter this court.

The ſecund court.

The quhilk day beand cum, and the ſuitis callit, and the court affirmit, the over-lord ſall ask at his Serjand, gif he has fulfillit the ward gevin at the laſt court; and gif the Serjand affirmis he did the ſamin lauchfullie, he ſall deliver the record of his ſummoundis to the Clerk, the ſamin to be red, and ſufficientlie provin be witneſſis in maner foirſaid; and thairefter, the ſaid tenent beand oftimes callit, and, time of day bidden, not compeirand, the ſaid over-lord ſall deſire the court to decern his ſaid tenent to be in ane default for his non-compeirance, and how the proceſs ſould proceid, and he depairt at that time as the ſecund court; the quhilk the court ſall cauſe to be done: And ane ſuitar, at thair command, ſall decern the ſaid tenent in ane default for his abſence that day, and mairover command the Serjand to ſummound him of new agane to the thrid court, to be haldin ſic ane day, as he quha was twiſe ſummoundit of befoir, and compeirit not; and alſwa to tak a diſtreſs in maner abone expremit; and mairover, to ſummound ſic ane man quha was borgh for the diſtreſs takin for the default of the tenent's non-compeirance at the ſecund court, to anſwer to his borgh-gang thairanent in the ſaid thrid court.

The thrid court.

The day of the thrid court beand cum, the court affirmit, and the ſuitis callit, the over-lord ſall ask at his Serjand gif he has fulfillit the ward gevin in the laſt court; and gif the Serjand ſayis that he has done the ſamin, he ſall give his record of the ſummoundis to the Clerk, cauſe the ſamin be red be him, and be provin be ſufficient witneſſis in maner abone expremit; at the quhilk time it ſall be leaſum to him quha was ſummoundit as borgh for the ſaid diſtreſs, takin for the default of the tenent not compeirand, as ſaid is, to borrow the ſaid diſtreſs, and to depart as law will: Thairefter the tenent beand oftimes callit, and not compeirand, his over-lord, court, ſuitar, and Serjand, may procede aganis him for the thrid court, in maner abone expremit for the firſt and ſecund courtis.

The feird court.

The quhilk day of the feird court beand cum, and the ſuitis callit, and the court affirmit, and the Serjand affirmand his ſummoundis to be lauchfullie maid, and preivand the ſamin ſufficientlie be witneſſis, as ſaid is, and the ſaid tenent oftimes callit and not compeirand, and lauchful time of day bidden; the over-lord ſall ask dome of the court, of the landis and tenandrie, that the ſamin aucht to be recognoſcit and appropriat in his handis for null defence, thairin to abide quhill thay be recoverit fra him as law will, and how the proceſs aucht to procede, and he to depairt as at the feird day: And the court counſallit and adviſit thairanent, ane ſuitar, at the informatioun of the court, ſall reſpite and continue the dome to the nixt court thairefter, and give command to the Serjand to paſs to the chemiſe of the landis, and thair lauchfullie ſummound the ſaid tenent to compeir ſic ane day and place in court, befoir the ſaid over-lord, to heir and ſé dome gevin aganis him as tenent, tuiching his landis and tenandrie, for his default and non-compeirance, and for null defence, befoir his ſaid over-lord, in ſic ane court, haldin ſic ane day, quhilk was the feird court of the ſaid over-lord's proceſs, led upon him, to ſchaw his halding of his ſaidis landis and tenandrie,

nandrie to him, as his over-lord thairof, as quha was thriſe ſummoundit thairto of befoir, and compeirit not.

The quhilk beand done conform to the ſaid command, and the day of the court beand cum, and the court affirmit, and the ſuitis callit, *&c.* and the ſaid tenent oftimes callit, and not compeirand, and the time of day beand bidden, the ſaid over-lord ſall ask the dome of the laſt court, that was put in reſpite to this court of befoir, tuiching the recognoſcing and appropriating the landis and tenandrie foirſaid, in his handis, for null defence, in like maner as he askit in the laſt court of befoir: Then, the over-lord removit out of court, the court counſallit and adviſit, ſall cauſe him enter in court agane, and ane ſuitar, or dempſtar of the ſaid court, ſall give dome in maner following: The laſt court.

"This court awardis for law, and I give for dome, that ſic ane man, The dome.
"as over-lord of ſic landis, is cum to the recognitioun and appro-
"priating of ſic landis, with the pertinentis, for default of com-
"peirance of ſic ane man, his tenent, in the laſt court haldin heir
"of befoir, quhilk was the feird court of the ſaid over-lord's pro-
"ceſs led upon the ſaid tenent, for ſchawing of his halding of the
"ſaidis landis till him as over-lord thairof, and als for null defence;
"and that the ſaidis landis, or the ſaid tenandrie, with thair per-
"tinentis, ſall remane and abide in thair over-lord's handis, ay
"and quhill thay be recoverit fra him as law will."

C. VIII. The maner how the tenent compeirand in ane of the firſt four courtis, ſall behave himſelf to his over-lord.

GIF the tenent of the landis, quhairof the halding is deſirit to be ſchawin, compeiris in ony court befoir the feird court, or at the feird court, to ſchaw his halding, as he quha was ſummoundit to that effect; in the firſt, efter that he is callit to compeir, he ſall enter, and heir his over-lord's accuſation, and ſall deſire the proceſs led upon him in the courtis of befoir to be red; and the ſamin beand red, he ſall uſe his lauchful exceptiounis aganis the ſamin, gif he ony has: And gif he has nane, he ſall ask ſicht of the ſummoundis, and of the ſummounder's powar, and of his office: And gif he ſchawis his powar, he ſould ask ſicht of his precept direct to him to mak the ſummoundis, togidder with the record thairof, and how the ſamin is provin; and may propone all his lauchful exceptiounis, dilatouris and peremptouris, aganis the ſamin: And gif he has na exceptioun, nor reſſonabill cauſe quhy he ſould not ſchaw his halding, he ſall ſchaw the ſamin in this maner, *viz.* Efter that he is deſirit, he ſall hald his chartouris and evidentis, quhilk he has of his landis and tenandrie, in his awin hand, and ſchaw thame oppinlie to his over-lord, the court, and the Clerk, and ſall not deliver thame out of his awin hand, untill he be ſicker that thay ſall be gevin him agane haill and feir, as he deliverit thame, and uncopyit, but delay, efter that thay ar anis red.

Item, Efter the chartouris ar red and deliverit, gif the tenent beand demandit, of quhom he haldis the ſaid tenandrie and landis, makis anſwer, that he haldis the ſamin of the ſaid over-lord for ſic ſervice as is contenit in his chartour, and offeris him reddie to do the ſamin: And gif the ſaid over-lord refuſis to reſſave the ſaid ſervice, alledgeand that the ſaid tenent is na tenent to him of the ſaid tenandrie and land, becauſe of tailzie, nor aucht not to bruik the ſamin be ony kind of reſſoun that the over-lord can ſchaw: In this cais the

tenentis or tenent is not haldin to anſwer him in ſic queſtioun, tuiching the propertie and richt of the ſaidis landis and tenandrie, be na proceſs led aganis him, bot allanerlie to ſchaw his halding, and do ſic ſervice as he aucht be his chartour thairfoir; becauſe na man may be pleidit or perſewit for the propertie and richt of his landis, without our ſoverane Lord's authoritie and letteris direct aganis him to that effect. *The maner of the proceſs of ſchawing of haldingis, cap. ult.*

Anent recognitioun of landis in the ſuperiour's handis.

C. I. The maner of recognitioun.

IT is ſtatute, that quhair the King underſtandis certanlie ony lauchful cauſe, quhairfoir landis haldin of him in cheif may be recognoſcit, he may direct his precept and letteris under his greit ſeill, to the Schiref, or his deputis, chargeand thame to paſs incontinent to the principal meſſuage of the ſaidis landis, and thair to tak ſaſine thairof in his Hienes name, be deliverance of zeird and ſtane, as uſe is, and recognoſce and retene the ſamin in his handis, as ſuperiour thairof, to remane with him in propertie in all time cuming; and alſwa chargeand thame to mak publicatioun thairof in the paroche kirk, as is efter ſpecifyit; and alſwa to mak inhibitioun to all his lieges and ſubjectis, that nane of thame tak upon hand to brek or contravene the ſaid recognitioun, under all pane that may follow in that point. *Ex lib. Colleſ.*

C. II. The cauſe of recognitioun ſould ſould be declarit.

ITEM, It is ſtatute and ordanit, that becauſe divers and ſindrie our ſoverane Lord's lieges ar troublit and prejudgit in thair landis and heritages, be quiet and ſecrete recognitiounis thairof, maid in thair ſuperiour's handis, that in time cuming thair be na recognitiounis of ony landis maid be the King, or ony uther ſuperiour, except, at the time of the making thairof, ane reſſonabill and lauchful cauſe be ſchawin for the quhilk the ſamin ſould be done. *Rob.* III. *c.* 2.

Item, All ſuperiouris, in makand recognitioun of landis haldin of thame, ſould opinlie declair and publiſh the cauſe quhairfoir he makis the recognitioun, in the paroche kirk quhair the landis lyis, on ane Sunday nixt and immediatlie followand the making of the ſamin, in time of prayeris and divine ſervice, quhen the parochineris ar convenit; and likewayis the tenent, quha deſiris his landis, quhilkis ar recognoſcit be his ſuperiour, to be lettin to him to borgh, ſould mak the like publicatioun of his deſire in maner under-written, and within the time efter ſpecifyit, gif the ſamin be refuſit be his ſuperiour, or gif he cannot have his perſonal preſence. *Rob.* III. *c.* 2.

C. III. The cauſe quhairfoir landis may be recognoſcit.

ALL recognitiounis ar null and of nane avail quhilkis ar not maid for ane reſſonabill cauſe, *Rob.* III. *c.* 15. Thir ar the cauſis of recognitioun be the law of this realme:

I. Gif ony fré tenent deceis, the ſuperiour may recognoſce and retene

retene all landis quhilk the ſaid tenent held of him in cheif, untill thay be recoverit fra him be the richteous air thairof.

II. Efter the air has recoverit his landis furth of the handis of the over-lord, it is leaſum to the over-lord to recognoſce and retene the landis, untill ſufficient ſecuritie be fund to him for payment of the releif of the landis to be maid to him.

III. Quhen the tenent committis ſlauchter, and is fugitive fra the law thairfoir, the over-lord has gude richt to recognoſce in his handis all landis pertening to that his tenent, and haldin of him as ſuperiour, ſwa lang as the tenent is fugitive fra the law, and naturallie livand.

IV. Gif twa perſounis ſtryvis and contendis, be way of deid and armis, for the poſſeſſioun of ony landis, the ſuperiour may recognoſce the landis in his handis, untill it be knawin quhilk of thame is richteous poſſeſſour thairof; the quhilk beand knawin, he ſould let the ſamin to borgh to him quha is fund lauchful and richteous poſſeſſour thairof.

V. Landis may be recognoſcit for ſervice aucht thairfoir, be him to quhom the ſamin is auchtand.

VI. The over-lord may recognoſce all and haill the landis, gif the ſamin be annalzeit be the tenent, without licence of the over-lord: And in this cais the over-lord is not obliſt to let them to borgh. *Rob.* III. *c.* 21.

Item, Gif ony fré tenent or vaſſal, quha haldis his landis be ſervice of ward and releif immediatlie of ane ſuperiour, ſell or annalzie all and haill the ſaidis landis, with thair pertinentis, or maiſt part thairof, without licence, conſent, or confirmatioun of his over-lord, or his predeceſſour, to be haldin of him, and his airis, or of his ſuperiouris; all and haill the ſaidis landis, als weill annalzeit as not annalzeit, with thair pertinentis, may be recognoſcit and reſſavit in the ſuperiour's handis, and baith the propertie and poſſeſſioun of the ſamin ſould pertene to him, to be diſponit at his pleaſour in all time to cum. 12 *Jan.* 1501, *The King* contra William Douglas. 20 *Novemb.* 1509, *The King* contra Alexander Stratoun. 12 *Jan.* 1509, *Tuiching the landis of* Glenſclune. 13 *Julij*, 1536, *The King* contra David Boſwell, 1 *t. c.* 117.

Bot gif the leiſt part of the landis be annalzeit be the tenent, without conſent of his ſuperiour, it is not leaſum to the ſuperiour to recognoſce the ſaidis landis, or ony part thairof, be reſſoun of the ſaid alienatioun, 11 *Decemb.* 1506, *The King* contra John *Lord* Maxwell. And it is to wit, that landis may be recognoſcit be the ſuperiour, for alienatioun of annuelrentis furth of the ſamin, extending to all and haill the profits of the maiſt part of the ſaidis landis. 16 *Mart.* 1569, David Balfour *contra* David Balfour, 2 *t. c.* 340.

C. IV. Of landis twiſe annalzeit, quhairof the laſt alienatioun is onlie confirmit.

GIF ony tenent ſell or annalzie all and haill his landis, or the maiſt part thairof, without licence, conſent, or confirmatioun of the ſuperiour, and the buyar thairof ſell and annalzie of new agane to ane uther the ſamin landis, or the maiſt part thairof, with the licence, conſent, or confirmatioun of the ſuperiour foirſaid, the ſamin landis may nevertheles be recognoſcit be the ſuperiour, contrare the principal tenent; becauſe he nather gave licence, confirma-

firmatioun nor conſent to the firſt alienatioun. 22 *Feb.* 1507, *The King* contra John *Lord* Maxwell, 1 *t. c.* 278.

C. V. Of landis gevin to ony man, and the airis maill lauchfullie gottin of his bodie.

GIF ony man ſellis or diſponis ony landis to ane uther, and to the airis maill lauchfullie gottin of his bodie, to be haldin of him, his airis and ſucceſſouris, and he to quhom the ſaid alienatioun or diſpoſitioun is maid deceiſſis, leivand na airis mail of his bodie behind him, the gevar of the ſaid infeftment, his airis and ſucceſſouris, as laſt airis of the ſaidis landis, may recognoſce the ſamin fra him to quhom thay wer annalzeit, his airis of tailzie, or zit of the richt line deſcendand of airis femail, lauchfullie gottin of his bodie to quhom the ſaid alienatioun was maid, and may diſpone upon the propertie and poſſeſſioun thairof at his awin pleaſour in all time cuming. 18 *Decemb.* 1506, *The King* contra John Auchtirane *air of tailzie, and* Margaret Auchtirane *air of line,* 1 *t. c.* 247.

C. VI. Landis ſould be recognoſcit be reſſoun of alienatioun, fra the annalzier allanerlie, and not fra his air.

LANDIS ſauld and annalzeit be ony perſoun, without licence, conſent, or confirmatioun of his ſuperiour, may on na wayis be recognoſcit be him, be reſſoun of the ſaid alienatioun, fra the air or ſucceſſour of the annalzier foirſaid; becauſe in this cais the treſpas of the predeceſſour ſould not be extendit to his air or ſucceſſour. 4 *Mart.* 1502, *The King* contra *Lord* Seytoun.

C. VII. Landis may not be recognoſcit for the ariage of the ſamin.

GIF ony tenement or land pertening to ony fré tenent, and haldin of ony ſuperiour in cheif, for payment of ane certane zeirlie annuel, and it happin the tenent to be abſent for ane lang ſpace, and the landis or tenement to be void, waiſt, and undiſtreinzeabill; nevertheles the over-lord may not recognoſce nor reſſave the ſamin in his awin handis, for the byrun maillis run out unpayit; bot he ſould abide untill he find ſum gudis or geir within the boundis of the ſaidis landis or tenement, quhilk may be diſtreinzeit for the ariages, and all byrun maillis thairof, *Quon. attach. c.* 27. *Mod. tne, cur. c.* 29. Bot gif ony tenent aucht to his over-lord ony ariage or ſervice for his landis, the over-lord may ſummound and charge his tenent to cum to his court, within the ſpace of xl. dayis, and to do that ilk ſervice, or elſe to ſchaw ane reſſonabill cauſe quhy he ſould not do the ſamin: And gif he will not compeir, it is leaſum to the over-lord, be judgment and dome of court, to recognoſce that landis or tenement in his handis, and to tak up and intromet with the zeirlie profits thairof. *Quon. attach. c.* 28.

C. VIII. Landis annalzeit with licence of the ſuperiour, may not be recognoſcit.

LANDIS on na wayis may be recognoſcit be the ſuperiour, for ony alienatioun thairof, gif the ſuperiour, or his predeceſſour, gave and grantit licence to his tenent to ſell and annalzie the ſamin; the quhilk licenee aucht and ſould be under the teſtimonial of the privie ſeill, gif the landis be haldin of the King. 22 *Mart.* 1509, *The King* contra John Dumbar, 1 *t. c.* 156.

C. IX. Licence gevin be the King to onie man, to ſet his landis in few.

JAMES, be the grace of God, King of *Scottis*, to all and ſindrie our lieges and ſubjectis, to quhais knawledge thir our letteris ſall cum, greiting. Wit ze us, to have gevin and grantit, and be thir our letteris gevis and grantis, for us and our ſucceſſouris, our ſpecial licence and fredome, to our lovit *N.* of *L.* to ſell, annalzie, and

and diſpone heritabillie in few ferm, all and haill the landis of *A.* with thair pertinentis, lyand within our ſchirefdome of *B.* to our lovit, and to his airis, ſucceſſouris and aſſignayis quhatſumever, without let or impediment to be maid be us, or our ſucceſſouris, for ever mair, in time to cum; notwithſtanding that the ſamin landis ar preſentlie haldin of us, be ſervice of ward and relief. Gevin under our privie ſeill, at *&c.* the *&c.* day of *&c.* the zeir of God, *&c.* and of our regne, *&c.* zeir. 7 *April.* 1511, 1 *t. c.* 171.

C. X. Confirmatioun or ratihabitioun ſtoppis recognitioun.

ALBEIT ony fré tenent, or vaſſal, ſell or annalzie all his landis, or the maiſt part thairof, without licence, conſent, or confirmatioun of his ſuperiour, zit on na wayis may the ſamin be recognoſcit be the ſuperiour, gif the ſaid tenent, at ony time efter the making of the ſaid alienatioun, has obtenit fra him, or his predeceſſouris, ſufficient confirmatioun of the ſaid alienatioun; becauſe the ſamin ſalvis the ſaidis landis fra the foirfaltour of recognitioun; or zit, gif the ſaid ſuperiour, or ony of his predeceſſouris, efter the ſaid alienatioun, has reſſavit the ſervice aucht and wont for the ſaidis landis; for in this cais he is underſtuid to renunce, quyte clame and diſcharge all richt, titill, actioun and clame of richt, quhilk he micht have to the ſaidis landis be reſſoun of the alienatioun foirſaid. 4 *Mart.* 1502, *The King* contra George *Lord* Seytoun. 14 *Jan.* 1509, *The King* contra Patrik Macdougal. 23 *Feb.* 1505, *The King* contra *Lord* Lindſay, 1 *t. c.* 137.

C. XI. Geving of ane new infeftment, diſcharge or renunciatioun, ſtoppis recognitioun.

THE ſuperiour may not recognoſce ony landis fra his tenentis, for ony alienatioun thairof, gif he, efter the making of the ſaid alienatioun, has gevin, *ex certa ſcientia*, ane new gift or infeftment of the ſamin landis to him, or has diſchargit all richt and clame that he has or may have to the ſamin, be reſſoun of ony alienatioun thairof. 9 *Martij*, 1509, *The King* contra *the Schiref of* Air. 1 *t. c.* 269.

C. XII. Reſſaving of reſignatioun in favouris of him to quhom the landis ar annalzeit.

LANDIS may not be recognoſcit for ony alienatioun thairof, gif the ſuperiour, or ony of his predeceſſouris, reſſavit ony reſignatioun thairof, efter the making of the ſaid alienatioun, and gave new infeftment of the ſamin to him to quhom thay wer annalzeit, or ony uther perſoun or perſounis. 3 *Mart.* 1504, *The King* contra *Laird of* Knockdohaw, 1 *t. c.* 313.

C. XIII. Blanche landis may not be recognoſcit be reſſoun of ony alienatioun.

LANDIS haldin of ony ſuperiour in blanche ferme may on na wayis be recognoſcit be him, albeit the proprietar thairof, without his licence, conſent or confirmatioun, ſell and annalzie the ſamin, or maiſt part thairof. 12 *Jan.* 1501, *The King* contra William Douglas. 22 *Jan.* 1509, *The King* contra *Mr.* Leſlie.

C. XIV. Ward landis annexit to blanche landis, may not be recognoſcit.

GIF ony man haldis landis, be ſervice of ward and releif, quhilkis ar unitit to ane baronie haldin in blanche ferm of the King, and ſellis and annalzies the ſaid ward landis, or maiſt part thairof, without his over-lord's licence, conſent, or confirmatioun, the ſamin on na wayis may be recognoſcit be his Hienes be reſſoun of the ſaid alienatioun; becauſe the ſaid ward landis ar unite and annexit to ane baronie haldin in blanche ferm, as ſaid is. 4 *Decemb.* 1506, *The King* contra John *Erle* Mortoun, 1 *t. c.* 243.

C. XV. Feild landis pertening to burrowis, may be recognoſcit be reſſoun of alienatioun.

ALL feild landis pertening to ony burgh within the realme, may be recognoſcit be the ſuperiour, gif all and haill the ſamin, or the maiſt part thairof, be annalzeit without his licence, conſent, or confirmatioun. 28 *Novemb.* 1505, *The King* contra *the burgh of* Air, 1 *t. c.* 223.

C. XVI. Burrow-landis within borgh may be recognoſcit be reſſoun of alienatioun.

GIF the King, or ony of his predeceſſouris of gude memory, gevis ony land to the Proveſt, Baillies, and communitie of ony burgh within this realme, and to the burgeſſis inhabitantis and remaneris within the ſamin burgh, and the ſaidis landis be all and haill annalzeit be thame, without his conſent and confirmatioun, and nathing thairof reſervit to pay the few maill auchtand to his Grace; the ſaid alienatioun maid be thame is of nane avail, and the annalzieris, als weill as thay to quhom the ſaid alienatioun was maid, tines and foirfaultis all propertie and poſſeſſioun of the ſamin landis, and the King's Grace has full regreſs to the ſamin, to be diſponit be him at his pleaſour in all time to cum. 12 *Decemb.* 1506, *The King* contra *burgh of* Air, 1 *t. c.* 246.

C. XVII. Landis ſet in few, conform to the act of parliament, may not be recognoſcit.

LANDIS may not be recognoſcit be the ſuperiour for ony alienatioun thairof, albeit the ſamin be haldin of him be ſervice of ward and releif, gif the ſamin alienatioun that is maid of the ſaid landis be in few-ferme diſponit, the quhilk is conform and aggreabill to the act of parliament. 26 *Feb.* 1502, *The King* contra *Laird of* Philorth, 1 *t. c.* 254.

C. XVIII. Non-entres ſtoppis recognitioun.

LANDIS or tenementis beand in the ſuperiour's handis be reſſoun of non-entres, may on na wayis be recognoſcit be him during the time of the non-entres. 13 *Mart.* 1502, Henrie Strogarth *contra the King*, 1 *t. c.* 140.

C. XIX. Kirk-landis may not be recognoſcit.

GIF ony annuelrent be auchtand furth of ony man's landis to the kirk, or ony eccleſiaſtical perſoun, and it happin the ſaidis landis to be recognoſcit be the ſuperiour, for alienatioun thairof, the ſamin annuelrent on na wayis cumis under the foirfaltour of recognitioun, bot aucht and ſould be bruikit be the kirk, or the ſaid eccleſiaſtical perſoun, in all times, like as thay did of befoir, notwithſtanding the recognitioun led and deducit upon the ſaidis landis; becauſe the kirk ſould not be hurt be ony recognitioun anent ony landis, rentis, or poſſeſſiounis pertening to the ſamin, and in poſſeſſioun of the quhilk it was, be ony juſt richt or titill, befoir the recognitioun was led. 19 *Novemb.* 1512, George Grahme *contra Schir* Richard Lindſay, *Chaiplane*, 1 *t. c.* 172.

C. XX. Landis annalzeit in liferent allanerlie, may not be recognoſcit.

LANDIS may on na wayis be recognoſcit be the ſuperiour, for ony alienatioun of the haill, or ony part thairof, gif the ſamin alienatioun be maid for liferent allanerlie, 1 *t. c.* 272.

C. XXI Form of the ſummoundis of recogniti oun.

ITEM, The precept or letteris, direct for taking of ſaſine, as ſaid is, beand dewlie execute and indorſit, and ſent agane to the King's Grace, and alſwa zeir and day beand outrun efter the taking of the ſaid ſaſine, and in the mene time the landis not lettin to borgh; the King, or the ſuperiour, in quhais name the landis ar re-

recognoſcit, ſall raiſe ſummoundis, and lauchfullie and peremptourlie ſummound, at the principal meſſuage of the ſaidis landis, and alſwa at the merçat-croſs of the principal burgh within the ſchirefdome quhair the landis lyis, the proprietar thairof, and all utheris havand interes thairto, to compeir at ane certane day befoir the Lordis of counſal, to heir and ſé the ſamin landis decernit to pertene in propertie to the ſuperiour in all time cuming, and to be diſponit be him at his will and pleaſour; becauſe the ſaidis landis ar haldin of him in cheif, immediatlie be ſervice of ward and releif, and ar all, or the maiſt part thairof, annalzeit without licence, conſent, or confirmatioun of the ſaid ſuperiour, or ony of his predeceſſouris, askit or obtenit thairanent; for the quhilk cauſe thay wer recognoſcit and retenit in the handis of the ſaid ſuperiour, be the ſpace of zeir and day laſt bypaſt, and not lettin to borgh. *Ex lib. Colleſ.*

C. XXII. Deſiring of landis to borgh.

ITEM, That na tenent ſall tine his poſſeſſioun be virtue of ony recognitioun, untill that zeir and day be bypaſt; bot zit he ſould do his diligence to repledge and deſire to borgh the landis recognoſcit fra his ſuperiour, within fourtie dayis nixt and immediatlie followand the making of the recognitioun, gif he may gudelie have preſence of his ſuperiour; utherwayis, gif he may not find him, he ſould paſs to the ſuperiour's principal place, and thair, in preſence of ſufficient witneſſis, offer himſelf reddie to do all that quhilk he aucht to do of law to him for the ſaidis landis; and thairefter, quhen he cumis to the perſonal preſence of his ſuperiour, he ſould, befoir the iſche and end of ane zeir and day, deſire the landis to be lettin to him to borgh. *Stat. Rob.* III. *c.* 2.

C. XXIII. Louſing of recognitioun.

ITEM, Gif the reſſounis gevin in and proponit be the tenent, deſirand the landis to be lettin to him to borgh, be fund ſufficient and reſſonabill, the landis ſould be lettin to him to borgh, he findand ſufficient cautioun thairfoir to anſwer as law will; and the ſuperiour, or the King under the teſtimonial of the greit ſeill, ſould direct his letteris to the Schiref, or Baillie, chargeand him to louſe the ſaid recognitioun, and let the landis to borgh to the tenent, as proprietar thairof, and to deſiſt and ceis fra ony intromiſſioun thairwith in his name, in all time cuming. *Rob.* III. *c.* 15.

C. XXIV. Aganis quhom ſummoundis of recognitioun may be intentit.

ANE ſuperiour, quha intentis ſummoundis of recognitioun of ony landis, be reſſoun of alienatioun thairof, aucht and ſould ſummound in ſpecial his principal and immediat tenent thairof, and in general all utheris havand, or pretendand to have, interes thairto: And gif the ſaid principal tenent, or uther perſounis ſummoundit in general, as ſaid is, compeiris and askis ane day to call thair warrand of the ſaidis landis, the ſamin aucht and ſould be gevin and grantit to thame, 11 *Feb.* 1510, *Biſchop of* Glaſgow, *in preſence of the Lordis of counſall*, 1 *t. c.* 161.

C. XXV. The propertie of the landis recognoſcit, pertenis to the tenent, indu-

THE fie and propertie of landis recognoſcit in the ſuperiour's handis, pertenis and remanis with him quha was tenent and proprietar of the ſamin befoir the recognitioun, untill the proceſs intentit aganis him be finallie endit; albeit the recognitioun be maid for ane

ring the dependence of the pley.

ane reſſonabill cauſe, or utherwayis, or albeit the landis be deſirit to be lettin to borgh, or not. *Rob.* III. *c.* 15.

C. XXVI. The pertinentis fallis under recognitioun with the principal.

GIF ony landis or baronie be recognoſcit in the handis of the ſuperiour, be reſſoun of alienatioun thairof, maid without his licence, conſent, or confirmatioun, all landis or tenementis, togidder with all uther pertinentis, that ar provin to be ane tenandrie of the ſaidis landis or baronie, be virtue of the ſamin alienatioun and recognitioun likewayis pertenis to the ſaid ſuperiour. 12 *Jan.* 1509, *The King* contra Andro Hering *of* Glaſclune, 1 *t. c.* 153.

C. XXVII. The tenent componand with his ſuperiour the ſub-tenent ſould have his landis, he payand his part of the compoſitioun thairof.

GIF ony perſoun haldand landis of ony ſuperiour be ſervice of ward and releif, without licence, conſent or confirmatioun of his ſuperiour, ſellis and annalzies, under reverſioun, all and haill the ſaidis landis, or the maiſt part thairof, ſum thairof to be haldin of him and his airis in blanche ferm, and ſum thairof be ſervice of ward and releif; or all to be haldin in blanche ferm; or all to be haldin be ſervice of ward and releif; and it happin that the ſuperiour, be reſſoun of the ſaid alienatioun, to recognoſce in his handis the ſaidis landis fra the principal tenent, the ſeller and annalzier of the ſamin, and thairefter he gevis the ſamin of new agane to him, for compoſitioun gevin, or to be gevin thairfoir; the principal tenent, aganis quhom the ſaidis landis wer recognoſcit, aucht and ſould give the like infeftment of the ſaidis landis, baith blanche ferm landis, and ward landis, ſauld be him of befoir, to him, or to his airis, to quhom the ſamin wer annalzeit, he or thay, payand thair part of the compoſitioun gevin or promittit be the principal tenent to his over-lord, and under ſiclike reverſioun as was gevin or promittit of befoir. 4 *Decemb.* 1512, *N.* contra *Erle of* Glencairne, 1 *t. c.* 190. Becauſe landis, with thair pertinentis, tenentis, and tenandries, beand recognoſcit fra the principal tenent be the ſuperiour, for alienatioun thairof, all and ſindrie the ſub-vaſſalis and ſub-tenentis, halding of the ſaid principal tenent, ſould on na wayis be prejudgit tuiching the propertie of thair tenandries, bot aucht and ſould of new be infeft in the ſamin be the ſaid principal tenent, thair ſuperiour, in the ſamin form and maner as thay wer befoir the ſaid recognitioun, thay payand to him thair part of the ſaid compoſitioun, ilk ane *pro rata* of the landis pertening to thame: And gif thay refuſe to pay to him the ſamin, he may hald and retene the ſamin landis pertening to thame, in his awin handis, ay and quhill thay mak ſufficient payment thairof. *Pen. Feb.* 1550, Duncan Mackellie *contra* John Murehead. 3 *Decemb.* 1533, 1 *t. c.* 308.

Anent diſclamatioun.

C. I. Of diſclamatioun, and the form thairof.

GIF ony perſoun feillis himſelf hurt or skaithit be his over-lord, and feiris that he be mair heavilie hurt efterwart, and thairfoir will diſclame and refuis him to be his over-lord, he ſould paſs perſonallie, or ſend his Actornay for him to the principal meſſuage of the landis quhilkis ar in contraverſie or pley; and the Actornay ſould

ſould tak with him his letteris of actornay, and reid the ſamin in that place, in preſence of ane Officiar of the over-lord, of quhom he clamis to hald the ſajdis landis in cheif, and of divers honeſt and ſufficient witneſſis, and thaireſter abyde thair quhill xij. houris of the day; and ather be himſelf in proper perſoun, or be his Actornay in his name, ſould planelie and opinlie intimat and mak knawin, anis, twiſe, thriſe, ilk ane efter utheris, be ane certane ſpace, that he haldis not, nor intendis to hald, ſic landis of ſic ane man quha alledgis him to be ſuperiour thairof; and that he expreſlie and allutterlie diſclamis and refuſis him to be over-lord thairof; becauſe he haldis and intendis in time cuming to hald the ſamin landis of ſic ane uther over-lord, be ſic ſervice, with peril of law, and offeris him, with all his landis, gudis and geir, reddie to do and anſwer as law will thairanent. *De Maritag. c. ult. Stat. Rob.* III. *c.* 20.

Anent annuellis.

C. I. Of compriſing, for byrun annuellis in borgh.

GIF ony man wald compriſe ony tenement, for byrun maillis or annuellis aucht to him thairof, and the tenent or proprietar compeir befoir the geving of the ſentence, or zit within zeir and day efter the geving thairof, and offer him the haill byrunnis for all termis bygane, the ſamin aucht and ſould be reſlavit fra him, and he ſould peciabillie, and without queſtioun, bruke his landis. *Item*, The tenent ſould pay to his over-lord the zeirlie maillis, dewties, and annuellis aucht be him: And gif the land be void, waiſt, and undiſtrenzeabill, the over-lord may recover all and haill the land and tenement for non-payment of the zeirlie maill and annuel: And gif the landis be ſtrenzeabill, it is leaſum to him to poind and diſtrenzie the ſamin for all the byrunnis, albeit he may not be compellit be the rigour of the law to do the ſamin, bot at his awin will and pleaſour; bot the tenent, be the law, is obliſt to pay the zeirlie maill and dewtie at the termis ſpecifyit in his chartour; the quhilk he aucht to do, conform to the tenour of his infeftment, albeit the land be void and waiſt, ſtrenzeabill or not ſtrenzeabill; for the tenent ſould keip and ſaif his landis quite and fré fra all burding of annuel or maill: And ſuppois the over-lord lift not, nor tak not up at ilk term his annuelrent, nor zit poindis nor diſtreinzies for the ſamin; it is not thairfoir reſſonabill that he ſall want and be defraudit thairof. And likewayis, albeit the tenent, be decept, fraud, or utherwayis, makis not payment in dew time, or refuſis to do the ſamin; nevertheleſs the over-lord ſall not tine or want his dewtie; for be the law the over-lord may have actioun and recourſe to the land and tenement for the not payment of the maill or annuel, in reſpect that the tenent is obliſt for his landis to pay in dew time his zeirlie maill: And gif he happin not to do the ſamin, he hurtis and prejudgis himſelf, and not his over-lord; for the over-lord may not be defraudit of his maill and dewtie, in na maner of way, be his tenent. *Leg. burg. c.* 156.

Anent skaith and damnage done be beiſtis, or done to beiſtis.

Si pauperiem quadrupes feciſſe dicatur.

C. I. Of ane beiſt doand harm to ane man's bodie.

GIF ony man's beiſt dois harm and skaith to ony perſoun, or hurtis ony man in his perſoun and bodie, the awner of the beiſt ſall pay the eſtimatioun and valour of the skaith, or then ſall give and offer the beiſt to him quha ſufferit the skaith. *Leg. Foreſt. c.* 32. *De jud. c.* 66, *& in fine, c.* 67.

Item, Gif ony man's horſe ſtrikis and hurtis ony perſoun with his hinder fute, he ſall give and offer the horſe to the man quha is hurt, and mak amendis for the skaith. *Leg. Foreſt. c.* 32. *De jud. c.* 66. *in fine, c.* 67.

C. II. Of harm done be ane beiſt to ane uther.

ITEM, Gif ony man's ox or beiſt hurt or wound ane uther man's beiſt, and he thairthrow happinis to die, the beiſt quhilk dois the harm ſould be fauld, and his price, togidder with the bodie and carcaſe of the uther beiſt that is deid, ſall be equallie dividit betwix the twa awineris of the ſaid twa beiſtis: And gif the awiner of the beiſt that dois the harm knew that he was evil heidit or cumberſom, and did not hald him in keiping, he ſall give the quik beiſt for the deid.

C. III. Of skaith done be beiſtis to ony man's fruitis, girſs or corn.

ITEM, Gif ony burges has maid ane hedge, or ony cloſe or dykit place, and his nichtbouris cattel enter thairin, and do ony skaith and harm, the awner of the cattel ſall content and pay the skaith, and mairover ſall give iiij. *d.* to his ſervand, quha ſuſtenit the skaith, and alſwa ſould repair and big up the place brokin be the ſaid cattel. *Leg. Foreſt. c.* 46. *De jud. c.* 32. *Stat. Will. c.* 17.

Item, Cattel or beſtial eatand or deſtroyand ony man's cornis or girſs, may be poindit be him, his Officiaris or ſervandis, or ony utheris in his name, without ane precept of poinding, or ony command gevin be him in writ to that effect; becauſe, gif ony man's Officiar or ſervand ſé ane uther man's gudis or cattel in his maſter's cornis or girſs, it is not neceſſar that he abide quhill ane precept of poinding be written. 27 *Feb.* 1541, *N.* Millar *contra* Cullernie, 2 *t. c.* 63.

Item, It is leaſum to ony man to poind ane uther man's cattel and gudis, eatand or deſtroyand his cornis or girſs, and inloſe the ſamin in ane houſe, or put thame in ane fauld, or within ony uther ſidker place, and thair to hald thame be the ſpace of xxiiij. houris: And gif the awner thairof, or ony uther in his name, cumis and deſiris to repledge the ſaid cattel, offerand ane pledge for payment and ſatisfactioun of the skaith done be thame, and to be compriſit efterwart be twa or thré honeſt nichtbouris; he quha poindit thame aucht and ſould reſtoir thame, and let thame to borgh to the awner thairof, or ony uther in his name; utherwayis, gif he with-haldis the

the ſamin, he may be callit and perſewit for ſpuilzie thairof: And gif nather the ſaid awner, nor nane in his name, compeiris, the ſaid xxiiij. houris beand bypaſt, he quha poindit thame aucht and ſould paſs, or ſend, and offer thame to the awner, deſyrand him to mak redreſs for the skaith done be thame; the ſamin beand compriſit, as ſaid is: And gif the ſaid awner refuſis to reſſave agane the ſaidis gudis, or to mak redreſs for the skaith done, as ſaid is, in that cais the poinder may cauſe convene twa or thré honeſt nichtbouris leiſt ſuſpectit, and ſchaw thame the skaith and damnage done be the ſaid cattel or beiſtis, and thairefter cauſe thame compriſe ane or ma of the ſaidis beiſtis, according to the avail and quantitie of the ſaid skaith ſuſtenit be the ſaid poinder: And gif the price thairof excecidis the skaith and damnage foirſaid, the poinder ſall deliver the ſuperplus to the awner of the cattel quhilkis wer poindit, and the ſaid nichtbouris to be ſufficient witneſſis in this cauſe. 8 *April*, 1570, Robert Lumiſden *contra* Robert Gordoun, 1 *t. c.* 877.

Item, Cattel or gudis beand poindit be ony man, eatand his cornis or girſs, and thairefter the poinder lettis the ſamin to borgh or pledge to ony ane, tenent or ſervand of the awner thairof, quha, in abſence, and without command or conſent of the awner thair maſter, intromettis thairwith; gif the awner of the ſaidis gudis, gettand knawledge of the ſaid poinding and reſtitutioun thairefter maid to his ſervand, and not beand content thairwith, bot reprovand the ſamin, cauſis call and drive the ſaidis gudis upon his cornis and girſs quha poindit thame of befoir, and ſwa intromettis not thairefter with the ſamin, bot ſufferis thame to go waith, and wander quhair thay pleis; he may not call or perſew him quha poindit thame for ſpuilzie, or wrangous intromiſſioun thairwith. 8 *April*. 1570, Robert Lumiſden *contra* Robert Gordoun, 1 *t. c.* 878.

C. IV. Of geiſs, hennis, and gait.

GIF ony man findis and apprehendis ane uther man's hennis, geiſs or gait, doand him harm and skaith, he may tak and cut off the heid of the geiſs and of the hennis, and ſtikth the noſe in the zeird, and may tak and eit the bodies thairof, gif he pleiſis; and the gait may be eſchete be him, ſwa that he may ſlay and eit the ſamin at his pleaſour. *Leg. foreſt. c.* 47. *De judic. c.* 33. *Stat. Will. c.* 17.

C. V. Anent ſwine.

IT is na wayis leaſum to ony man dwelland within burgh to hald ſwine in it, except he cauſe keip thame be ane keipar, or than feid thame in ane cruive, that his nichtbouris incur nor reſſave na damnage nor skaith be thame. *Leg. burg. c.* 87. And gif ony burges, or uther perſoun, dwelland within burgh, has without the ſamin ony ſwine, and thay happin to be apprehendit without ane keipar followand thame, doand skaith or harm to ony man, he may ſlay thame, be the law of the burgh, and, as his eſchete, tak and eit thame: And gif thay be uther beiſtis nor ſwine, the awner thairof ſall give ane penie for ilk fute, or ſall amend and pay the skaith; bot it ſall be in the optioun and fré will of him to quhom the skaith is done, quhidder he will reſſave iiij. *d.* for the four feit of ilk beiſt, or tak and reſſave amendis and ſatisfactioun for the damnage and skaith done to him. *Leg. Foreſt. c.* 44. *Stat. Will. c.* 17. *De judic. c.* 30.

Item,

Item, Gif ſwine workis and turnis up ony man's medow or corn landis, the awner of the ſwine is haldin to fill up all the hoillis maid be thame with quheit, (*frumento.*) *Stat. Will. c.* 17. *De jud. c.* 58.

C. VI. Of ane man quha ſlayis ane uther man's beiſt.

ITEM, Gif ony man willinglie, and of ſet purpois, hurtis and ſlayis ane uther man's beiſt throw ire or haitrent, he ſall pay the price thairof, and tak the deid beiſt's bodie, gif he pleiſis: Bot gif he hurtis and ſlayis the ſamin be chance, and not of foirthocht felonie, the beiſt ſall be appriſit to the valour thairof quhen it was livand, and to the valour thairof quhen it is now deid, and the eſtimatioun and price ſall be dividit betwix thame, *Leg. Foreſt. c.* 32. *De jud. c.* 66. *in fine. c.* 67. togidder with the deid beiſt; or he may be compellit to give ane haill quik beiſt thairfoir; and the haill price of the deid beſt ſall be dividit betwix thame. *De jud. c.* 67.

C. VII. Of him quha ſlayis ane uther man's dog.

ITEM, It is ſtatute and ordanit, gif ony man of ſet purpois, and aganis the law, ſlayis ane uther man's dog, he ſall walk his midding be the ſpace of xij. monethis, and ane day, or than ſall content and pay to him all his skaithis ſuſtenit be him within that xij. monethis and day, for want of his hound or dog. *Aſſiſ. Reg. David.*

C. VIII. Of skaith done be ane beiſt to ane uther in ony ſtrait paſſage.

GIF ony perſoun havand na burding nor uther thing, is hald and ane horſe, or uther beiſt, in his hand, or leidand the ſamin on ane brig, or ony ſtrait paſſage, or ony uther perillous or dangerous place, meitis and rancounteris ony uther perſoun, calland or drivand twa or ma horſe or beiſtis befoir him, or leidand in his hand ane horſe, or uther beiſt, chargit with ane laid or burding, upon the ſamin brig or place, in the quhilk, throw the ſtraitneſs of the paſſage, the ane may not paſs by the uther without damnage and skaith; in this cais, he quha has na uther thing bot ane horſe, or uther beiſt, ſould return bak agane, and give place to the uther to cum fordwart quha is drivand the ſaid horſis or beiſtis, or the ſaid laidnit horſe or beiſt: And gif he dois not return, bot cumis fordwart, and thairthrow ony harm or skaith happinis to be done, he is haldin of the law to amend and repair the ſamin; becauſe he quha is chargit with ane beiſt allanerlie, ſould ſaif himſelf, and give place to him quha has care of divers beiſtis, or of ane beiſt laidnit with ony thing. *Stat. Will. c.* 28. *Leg. burg. c.* 152.

C. IX. Of hurting of ane man's oxin.

GIF ony perſoun makand convocatioun of our ſoverane Lord's lieges, cumis upon ane man in feir of weir, and hurtis his oxin, he or thay quha hurtis the ſamin, quhidder he be the principal, or ony of his complices and colligues, for the contemptioun done to the King's Hienes, may be chargit to enter in ward, thair to remane, upon his awin expenſis, quhill he be puniſt thairfoir, and fred be the King's Grace: Attour, he quha is principal may be callit and perſewit be the awner of the ſaid oxin, to content and pay to him ſa mekil as he may preive that he is skaithit throw hurting of the ſamin. 23 *Jan.* 1487, *Mr.* Gavin Forret *contra Laird of* Kynneir, *and his complices*, 1 *t. c.* 53.

Item, Gif ony perſoun wilfullie and maliciouſlie ſlayis, hochis, or

or hurtis oxin pertening to ony man, he aucht and ſould pay to him the price of the oxin quhilk he has ſlane, and alſwa ane certane ſowme of money modifyit and taxit be the diſcretioun of the King and Lordis of counſal and ſeſſioun, for the wounding and hurting of the ſaid oxin, for ilk ane, as he is mair or leſs woundit or hurt, togidder with the proffitis of his haill landis, quhilk he wantis throw the laying waiſt thairof, be reſſoun of the ſlaying or hurting of the ſaid oxin; and als for the contemptioun done to the King's Hienes, and for the wilful and violent breking of the general peace within his realme, he may be chargit, at the King's will, to enter his perſoun in ward, thair to remane upon his awin expenſis, quhill he be fred be the King's Hienes thairfra. 11 *Feb.* 1499, *Priour of* Sanctandrois *contra* Robert Callender, 1 *t. c.* 82. 9 *Feb.* 1523, *Mr.* Johne Vaſe *contra* Mathow Agnew, 1 *t. c.* 192.

Anent milnis, multuris, and pertinentis belonging thairto.

C. I. Of ane miln biggit on ane uther man's landis.

GIF ony man biggis ane miln, or ony uther bigging within the ground or landis pertening to ane uther in propertie or heritage, the ſamin aucht and ſould in all time cuming, *jure ſoli*, and be the ground richt, pertene to the proprietar of the ſaidis landis and ground. 7 *Feb.* 1504, Andro Wod *contra* John *Lord* Drummond, 1 *t. c.* 211.

C. II. Of the heritabill poſſeſſioun of the water-gang to ane miln.

GIF ony man be infeft heritabillie in ane miln, and in poſſeſſioun of ane water-gang thairto, and ane uther man thairefter big ane new miln, and drawis the ſaid water to hir fra the uther miln biggit of befoir, he dois wrang, and aucht and ſould be compellit to deſiſt and ceis thairfra in all time cuming. *Ult. Julij*, 1474, Robert Cochrane *contra* Robert Wallace, 1 *t. c.* 66.

C. III. Of drawing and ſtopping ane water to cum to ane miln.

NA man may draw the water, or mak ane miln-dam throw ane uther man's landis, nor zit ſtop the water to the deſtructioun of his cornis, or to his injurie and ſkaith, without his licence and favour. 13 *Junij*, 1480, Robert Charterhous *of* Amisfeild *contra* John Maxwell, 1 *t. c.* 25.

C. IV. Na man may alter the courſe of water cumand to ane uther man's miln.

GIF ony man has ane miln heritabillie pertening to him, and is in peciabill poſſeſſioun of the ſamin, with ane dam and clouſe thairin, throw the quhilk ane water paſſage cumis, leidand and conduceand the water fra the dam to the miln; it may not be ſtoppit, nor he troublit be ony perſoun, be altering of the ſaid clouſe, or drawing off the water fra the ſaid water-paſſage or dam, or be making of the courſe of the water to be of greiter force or ſtrenth than of befoir, or zit to be of leſs force or virre than of befoir, quhairthrow the ſaid miln is or may be mair haiſtie or mair ſlaw in grinding of cornis nor ſcho had wont to be in times bygane. 24 *Mart.* 1563, Thomas Thomſon *contra the gudeman of* Humbie, 1 *t. c.* 821.

C. V. Of poſſeſſioun of ane water-gang to ane miln.

GIF ony man be in peciabill poſſeſſioun, paſt memorie of man, of ane burn or water cumand to his miln, he, be reſſoun of his lang poſſeſſioun, quhilk he and his predeceſſouris has had of lang

time befoir, aucht and ſould bruik and joiſe the ſamin burn or water, rinnand to his miln, like as he and his predeceſſouris did of befoir, ſwa that the ſamin may not be drawin away, ſtoppit or maid war be ony man, until the time that the ſaid poſſeſſour be lauchfullie callit befoir ane Judge ordinar, and ordourlie put thairfra. 13 *Novemb.* 1500, *Abbot of* Scone *contra* Johne *Lord* Drummond, 1 *t. c.* 192.

C. VI. Of deſtroying and caſting down of ane miln-dam.

GIF ony man happinis to deſtroy or caſt down ane uther man's miln-dam or leid, and thairby, or be ony uther way, layis the miln idill or waiſt, he ſall be compellit to pay the awner thairof the damnage, multuris, skaith and intereſt, ſuſtenit be him throw the laying waiſt of the ſaid mill, fra the time of the down-caſting of the dam, to the day and dait of the ſummoundis; and alſwa he aucht to be compellit to big up the ſamin agane, and mak it als ſufficient as it was the time of the down-caſting thairof, and that upon his awin coiſtis and expenſis: And als, for contemptioun done to the King's Hienes, in breking of his peace and protectioun, his perſoun may be put in ward, thair to remane upon his awin expenſis, induring the King's will and pleaſour. 18 *Octob.* 1469, James Scrymgeour *Conſtable of* Dundie, *contra* Thomas Wintoun. 8 *Auguſt.* 1526, *Abbot of* Cambuskynneth *contra* Henrie Crawfurd. *Ult. Maij*, 1567, Robert Liddel *contra Ladie* Zeſter, 1 *t. c.* 4.

Item, Ane miln beand laid waiſt, hewin or brokin down be ony perſoun, the down-breker ſall be haldin to pay to the awner thairof the damnage and skaith ſuſtenit be him thairthrow; and, for the contemptioun done to the King's Hienes, his perſoun to be put in ward, thairin to remane, upon his awin expenſis, quhill he be fred be the King. 15 *Octob.* 1478, Williame *Lord* Creichtoun *contra* Herbert Johnſtoun, 1 *t. c.* 21.

C. VII. Of the maſter and ſervandis within the miln.

AT *Scone*, the zeir of God 1209. It is ſtatute and ordanit be King *William*, with commoun conſent of the realme, that all thay quha has ane miln in thair landis ſall have ane maiſter, and twa ſervandis, like as he that has the King's miln, for maill or utherwayis, ſall have na ſervandis in the miln bot at the conſideratioun and ſicht of gude and honeſt men in the town; and he that is maiſter or ſervand within the miln ſould be leill and of gude fame, and ſould ſweir the aith of fidelitie to the King, and to the awner or Lord of the miln; and that thay ſall tak thair multure leillelie and trewlie fra thame that cumis to the miln; and that thay ſall keip to ilk ane of thame thair rowme, without fraud or guyle. *Leg. burg. c.* 66.

C. VIII. Of multuris.

ILK freman ſall give for multure at the miln, the xvi. the xx. or the xxx. meaſour, efter the tenour of his infeftment: And mairover, for ilk xx. bollis, thay ſall give ane firlot in name of knaveſhip. Ane husband-man, or mailler of land of ſervice, ſall give the xiij. meaſour in name of multure, and of ilk chalder ane firlot, of knaveſhip. *Stat. Will. c.* 11. *Iter. Camer. c.* 22.

C. IX. The King's milnis, and thirle multuris thairof.

GIF ony tenent or occupyaris of ony landis, and thair foirbearis, has bene in continual uſe, be the ſpace of threttie zeiris, in cuming to ony miln pertenand to our ſoverane Lord, and in paying thair multuris

turis to the fermoraris of the ſamin miln, or utheris havand richt thairto, gif thay paſs away fra the ſaid miln, thay aucht and ſould nevertheleſs pay the ſaid multure efter the modificatioun of the Judge. 5 *Feb.* 1521, *The King's Comptroller, and fermorar of the miln of* Rotheſay, *contra the tenentis of* Rotheſay, 1 *t. c.* 371.

C. X. Of thirlit multuris.

GIF ony man clamis thirlit multuris of ane uther, he aucht and ſould libel ane titill, quhairby he ſould have the ſamin; becauſe, albeit ane, of his awin fré motive will, be in uſe to cum and grind his corn at ane uther man's miln, and pay multure thairfoir, he ſould not thairby be aſtrictit to pay ony thirlit multure; *quia, ex actu merè voluntario, etiam per centum annos, non inducitur conſuetudo, nec jus alteri acquiritur.* 14 *Mart.* 1541, *Mr.* Alexander Ogilvie *contra tenentis of N.* 2 *t. c.* 77.

C. XI. He quha halds his landis blanche, ſould pay na thirlit multure.

GIF ony man is infeft in landis with milnis and multuris, hald- and the ſamin of his ſuperiour in fré blanche, payand, in name of blanche, bot ane penie allanerlie, or uther dewtie, ſic as few-maill, he, nor his tenentis, occupyaris of his landis, may on na wayis be compellit to cum with thair cornis to the ſuperiour's miln, and pay multure thairat; nather aucht he ony thirle multure, be reſſoun of his infeftment, bot ane penie allanerlie, in name of blanche ferm, gif it be askit, or the uther dewtie contenit in his infeftment. 1 *Julij*, 1542, Alexander Innes *contra* Robert Cairncroſs, 1 *t. c.* 552.

C. XII. Of cornis fré fra payment of multuris.

ALBEIT ane be aſtrictit to pay thirle multuris, and to grind the cornis growand upon his ground at ane ather man's miln, zit he nevertheleſs is not bund nor obliſt to bring to his miln that part of his cornis quhilk payis his zeirlie fermis, his teindis, the toill of the threſhing of his cornis, his penie maill, or cornis for ſawing of the ground, for ſuſtentatioun of his beſtial, or for uphalding of his pleuch and pleuch graith. 12 *Julij*, 1565, *Laird of* Fordel contra *tenentis of* Frenchy, 1 *t. c.* 1332.

C. XIII.

ANENT the taking of multure of flour that cumis furth of uther landis. *Ja.* IV. *fol.* 97. *act.* 76. 26 *Junij*, 1493.

C. XIV. Of multuris of bocht corn.

GIF ony man buyis corn in ane ſucken or lordſchip, and carty- and the ſamin away, paſſis in ane uther lordſchip, and remanis thair, at table, to eat and drink, and puttis his ſeck in the King's gait, he ſall be fré and quyte fra payment in that lordſchip: Bot gif he puttis his ſeck within houſe or mailling (*firmarium*) of ony uther, he ſall not paſs fré, bot thair ſall pay multure. *Stat. Will. c.* 11. *Iter. Camer. c.* 26. *Lib. Commiſ. leg.* 1. *c.* 1.

Item, Thay quha buyis cornis within the King's port at ſchippis, or fra burgeſſis, at thair girnallis, may cary the ſamin peciabillie, and without impediment, to ony miln in the four partis about. *De jud. c.* 50.

C. XV. Multure payit be him quha removis fra the ground.

ITEM, Gif ony man takis land for maill, ferm, or uther dewtie, *&c. Vide ſtat. Will. c.* 11. *Iter. Camer. c.* 26.

Item, GIF ony mailler has gevin up his landis to the Lord of the tenement. *Vide ſtat. Will. c.* 11. *Iter. Camer. c.* 26.

GIF

C. XVI. Of him quha abſtractis his multure wrangouſlie.

GIF he quha is aſtrictit and thirlit to ony miln, paſſis to ane uther miln with his cornis, without licence and leive of the millar, and is takin and apprehendit be the Lord's ſervandis, the Lord and awner of the miln ſall have the horſe, and the millar ſall have the ſack and the corn. *Stat. Will. c.* 11. *Iter. Camer. c.* 26.

C. XVII. Of the miln brokin or ſtoppit with froſt.

GIF the miln is brokin, or wantis water, or is ſtoppit with froſt. *Vide ſtat. Will. c.* 11. *Iter. Camer. c.* 26.

C XVIII. The breve, *de aqua ductu.*

GIF ony man caſtis down ane uther man's miln, leid or watergang, or ſtoppis the water of the famin, the breve of our ſoverane Lord's chapel *de aquæ ductu*, may be direct to the Lordis, and fra thame to the Schiref, to miniſter juſtice in the ſaid mater, as he will anſwer to the King's Hienes thairupon; and als to cognoſce tuiching the damnage and skaith ſuſtenit be the awner of the miln, throw the laying waiſt of the ſamin. 5 *Maij*, 1491, James Muſchert *contra* John *Lord* Drummond, 1 *t. c.* 51.

C. XIX. Of thame quha layis milnis waiſt.

GIF ony man troublis or moleſtis ony perſoun, or his ſervandis, beand in peciabill poſſeſſioun of ony miln, and violentlie and maſterfullie ſpuilzies and takis away the miln-rynd, or ony uther neceſſar part of the miln, without the quhilk ſcho can nather grind nor gang, he aucht and ſould refound, content, and pay to the awner of the ſaid miln, the damnage, skaith and intereſt ſuſtenit be him throw halding and laying waiſt of his miln; the quhilk ſpuilzie beand provin be witneſſis, or utherwayis, the avail and price of that quhilk was ſpuilzeit, and als of the ſaid damnage, coiſt, and skaith, aucht and ſould be referrit to the aith of the ſaid awner. 8 *Novemb.* 1527, Robert Chalmer *contra* William Ramſay, 1 *t. c.* 334.

Item, Gif ony man, be himſelf, or utheris in his name, ſtoppis, or makis impediment to ony man, his millar, tenentis or ſervandis, to cary or bring ane miln-ſtane fra ony place or quarrel to his miln, be the hie and commoun paſſage, and thairthrow layis the ſaid miln waiſt, or zit maſterfullie brekis the ſaid miln-ſtane, and thairthrow layis the ſaid miln waiſt, he aucht and ſould pay the valour and price of the ſaid miln-ſtane to the awner thairof, togidder with the coiſtis, damnage and skaith ſuſtenit be him throw laying waiſt of his miln, for the cauſis foirſaid. 17 *Aug.* 1526, John Drummond *contra* William Murray *of* Tullibardin, 1 *t. c.* 282.

C. XX. Of hand-milnis.

IT is ſtatute that na man preſume to grind quheit, maſhloch, (*maſcilionem*) or uther cornis, with hand milnis, except he do the ſamin, be reſſoun of tempeſt of wether, or for want and inlaik of uther milnis; and in this cais he quha grindis his ſaidis cornis at hand-milnis, ſall give for multure the xviij. meaſour: And gif ony cumis in the contrare of this law and ſtatute, he ſall at na time heirefter have powar to uſe or have ony hand-milnis; and mairover ſall be compellit to grind his cornis at uther milnis, and to pay in name of multure the xxiiij. meaſour. *Stat. gild. c.* 20.

Item, It is not leaſum to ony man to have ony ma nor twa pair of hand-milnis; and quha is convict to have ma, ſall tine and foirfalt the ſamin for zeir and day. *Stat. gild. c.* 42.

Anent

Anent coilheuchis.

GIF ony perſoun alledgis, and complenis that ony man houkis or delvis coill far within his ground, the Schiref may tak cognitioun thairanent; and the Lordis of counſall ſall interpone thair decrete, and give letteris conform thairto. 10 *Decemb.* 1533, George Henriſone *contra the Abbot of* Sanctcolme, 1 *t. c.* 441. C. I. Of houking coillis within ane uther man's ground.

Item, Ony man may ſeik and win coill within his awin landis and heritage, bot he may not drive, houk, ſpuilzie, nor tak away the ſamin within the juſt meithis and marchis of landis pertening to his nichtbouris, or ony uther man: And gif he dois utherwayis, the Schiref, at command of our ſoverane Lord's letteris, may tak cognitioun thairintill, and charge him to deſiſt and ceis thairfra in time cuming, and to content and pay to the proprietar of the landis the price of the coillis that wer takin away, and driven within his ground. 6 *Julij*, 1540, *L.* Seyfeild *contra L.* Grange, 1 *t. c.* 509.

GIF divers perſounis have divers coil-heuchis neir adjacent to uther, and ather of thame feir ony harm or skaith to be done to his coil-heuch, be the winning, working and labouring of the uther, he may ſeik *cautionem damni infecti*, befoir the ordinar Judge. 10 *Aug.* 1532, *Officiall of* Louthiane, (*per viam proteſtationis*:) *of the admiſſioun of the quhilk na mentioun is maid*, 1 *t. c.* 974. C. II. *Cautio damni infecti.*

GIF ony man be decernit to have done wrang in the moleſting and trubling of ony uther man in winning of coillis, or to have wrangouſlie ſtoppit his coilpittis, ſwa that the ſamin wer be him laid idle, and maid war; he aucht not onlie to deſiſt and ceis thairfra in time cuming, bot alſwa content and pay the proffitis quhilk the awner micht have had of the ſaid coill, fra the time of the ſtopping of the ſamin, unto the time of the intenting of the ſummoundis. 26 *Maij*, 1533, 1 *t. c.* 926. C. III. Of him quha layis ane uther man's coil-pit idle or waiſt.

Anent the actis of adjournal.

ANE beand accuſit or indytit in the juſtice-air, and takand him to his remiſſioun, for thift, reif, ſpuilzie, or ony uther crime or treſpas, he, or his ſovertie, gif ony was fundin be him befoir the Juſtice, may be efterwart callit thairfoir civillie. 9 *Julij*, 1532. 13 *Julij*, 1532, 1 *t. c.* 674. C. I: Gif ony man takis him to his remiſſioun befoir the Juſtice, he or his ſovertie may be callit civillie.

GIF ony man, indytit and accuſit in the juſtice air, for ony crime or treſpaſs, grantis and confeſſis the ſamin, he is haldin and obliſt to anſwer civillie to the partie, as gif he had tane him to his remiſſioun thairfoir. *Ult. Julij*, 1533, 1 *t. c.* 930. C. II. He quha confeſſis the crime befoir the Juſtice, may be callit civillie thairfoir.

GIF ony man committis ſlauchter, mutilatioun, or ony uther crime, and ſatisfies the partie havand interes thairfoir, and thairefter it happinis him to be indytit and accuſit in the juſtice air, and takis him C. III. He quha has ſatisfyit the partie, and

thairfoir is indytit befoir the Juſtice, ſould not be compellit to mak new aſſythment.

him to his remiſſioun or compoſitour for the ſamin crime, he ſould not be compellit to pay ane uther aſſythment or ſatisfactioun thairfoir, notwithſtanding his confeſſioun maid in judgment, as ſaid is. 9 *Junij*, 1546, 1 *t. c.* 1091.

C. IV. Quhat thingis the perſoun indytit criminallie befoir the Juſtice, may be decernit to pay be the civil Judge.

He quha reivis, takis or ſpuilzies ane uther man's cornis, cattel, gudis or geir, and, in the juſtice air, takis him to his remiſſioun, the ſamin beand ſufficientlie provin be the rollment of the ſaid juſtice air, extractit furth of our ſoverane Lord's adjournal, under the ſign and ſubſcriptioun of the Juſtice-Clerk for the time, aucht and ſould be decernit befoir the civil Judge, not onlie to reſtoir, content, and pay the ſaidis gudis and geir, or ellis the avail and prices thairof, bot alſwa the damnage, coiſt and skaith ſuſtenit be the awner thairof, throw the wanting of the ſamin, togidder with the expenſis of the pley, and of the witneſſis quha wer examinat and deponit in the ſaid mater. 23 *Octob.* 1488, James Symſone *contra* Robert Drummond, 1 *t. c.* 56.

C. V. Reſtitutioun of gudis, and probatioun of the valour thairof.

Ony man beand accuſit in the juſtice air, for reif, thift, ſpuilzie, or wrangous intromiſſioun with gudis and geir pertening to ony uther perſoun, takis him to his remiſſioun and compoſitour thairfoir; gif thairefter he be perſewit befoir the civil Judge for the ſamin, he, or his ſovertie, gif ony was fund be him, aucht and ſould be decernit to reſtoir and re-deliver the ſamin gudis ſpuilzeit, reft, ſtollin, or wrangouſlie intromettit with be him: And gif the ſamin be not extant *in rerum natura*, the avail and prices thairof aucht to be referrit to the probatioun of the perſewar, fra quhom the ſaidis gudis wer takin in maner foirſaid. 14 *Julij*, 1501, Robert Creichtoun *contra* Alexander Gray. 22 *Mart.* 1532, 1 *t. c.* 110.

C. VI. Liquidatioun of the prices of the gudis may be referrit to the partie's aith.

Ane man takand him in the juſtice air to his remiſſioun, for ſpuilzie of ony gudis and geir, and findand ſovertie for ſatisfactioun of the partie, gif thairefter the decrete of a civil Judge beis gevin and obtenit aganis the ſovertie, togidder with the liquidatioun of the prices of the gudis and geir ſpuilzeit, the ſovertie beand callit and ſummoundit to heir and ſé the price provin, may refer the liquidatioun of ony part of the ſaidis gudis contenit in the ſaid decrete, to the aith of the perſewar: And gif the perſewar makis faith, or grantis that he wantis not ſic gudis as ar referrit to his aith, the ſovertie on na wayis aucht nor ſould pay the prices thairof obtenit aganis him, bot the executioun of the decrete ſould be ſuſpendit in that part, notwithſtanding of the act of adjournal, and the liquidatioun of the prices contenit in the decrete foirſaid. 9 *Jan.* 1505, Adie Haiſwell *contra* Raulf Ker, 1 *t. c.* 22.

C. VII. Of him quha makis proteſtatioun befoir the Juſtice.

Gif ony man, accuſit in the juſtice air for ſpuilzie, reif, thift, or laying waiſt of ony landis, takis him to his remiſſioun thairfoir, and then inſtantlie denyis the ſpace, of the with-halding of the gudis, or laying waiſt of the landis, and quantitie of the proffitis thairof, proteſtand ſolemnitlie, that his confeſſioun hurt him not befoir the civil Judge anent the ſpace of the zeiris, and quantitie of the proffitis, without the ſamin be ſufficientlie provin befoir him, as accordis of the law; he, nor his ſovertie, gif ony was fund be him

him befoir the Juſtice, ſould not be compellit befoir the civil Judge to pay the proffitis of the ſaid gudis or landis, except the ſamin be provin be witneſſis, writ or utherwayis; for in this cais the confeſſioun contenit in the act of adjournal is not ſufficient probatioun; becauſe the ſamin was maid be the perſoun accuſit, the time of his accuſatioun, for juſt feir of his life, and dreadour that micht fall in ane conſtant man, 14 *Julij*, 1541, Johne Grierſoun *of* Lag *contra Lord* Zeſter. 5 *Mart.* 1542, 1 *t. c.* 524. For it is to wit, that the confeſſioun of ony partie in the juſtice air takand him to his componitur, for ony ſpuilzie or uther crime, preivis not befoir the civil Judge, the wrang, crime, nor profitis, nor time of the alledgit ſpuilzie, gif he in the mene time proteſtis, that the ſamin confeſſioun ſall not be hurtful nor prejudicial to him: Bot gif na proteſtatioun be maid be him, the act of adjournal of his confeſſioun, contenand the proffitis, zeiris, and times of the ſpuilzie, or uther crimes, is juſt and ſufficient probatioun aganis him, 13 *Julij*, 1541, 2 *t. c.* 37. or his ſovertie, gif ony be fundin be him, for ſatisfactioun of partie; and miſteris na farder probatioun be witneſſis, or utherwayis, tuiching the doing and committing of the ſaid crime; and the prices, and avail of the gudis ſpuilzeit, aucht and ſould be referrit to the aith of the perſewar. 23 *Octob.* 1529, John Trotter *contra* Robert Dikſone, 1 *t. c.* 294.

C. VIII. Defenſis permittit befoir the civil Judge.

GIF ony perſoun, indytit in the juſtice air for ſpuilzie, or ony uther crime, takis him to his remiſſioun thairfoir, and in the mene time proteſtis for all his lauchful defenſis befoir the civil Judge, he preivand the ſaid proteſtatioun ſufficientlie be writ, aucht and ſould be heard to preive and uſe his defenſis befoir the ſaid civil Judge, be reſſoun of the ſaid proteſtatioun; becauſe the ſaid confeſſioun is underſtuid to have bene maid throw juſt feir and dreadour of deith, and thairfoir ſould not prejudge, or be hurtful to the maker thairof, except he perſevere and continue in the ſamin. 18 *Mart.* 1541, *Mr.* Andro Blakſtok *cantra N.* Wilſon, 2 *t. c.* 85. *Pen. Mart.* 1532. 25 *Junij*, 1533, James Skirving *contra* Alexander Allan. 12 *Feb.* 1534, 1 *t. c.* 413.

C. IX. It is leaſum to the defendar, befoir the civil Judge, to deny the perſewar's petitioun.

GIF ony perſoun takand him to his remiſſioun in the juſtice air for ſpuilzie, proteſtis for all his lauchful defenſis to be uſit be him befoir the civil Judge, he may deny the intromiſſioun with the gudis and geir, or with ony part thairof, and aucht and ſould be *ſimpliciter* aſſoilzeit fra the ſpuilzie, gif the perſewar preive not ſufficientlie his intromiſſioun thairwith, notwithſtanding his confeſſioun maid in the juſtice air, and contenit in the act of adjournal, that he intromettit with the ſamin. 15 *Julij*, 1542, *Mr.* Andro Blakſtok *contra N.* Wilſon, 2 *t. c.* 122.

C. X. Sovertie and cautioun ſould be fund befoir the Juſtice.

GIF ony man is indytit and accuſit befoir the Jnſtice-general in his air, or at ony particular dyet, for ſlauchter, mutilatioun, reif or ſpuilzie, or ony uther crime or treſpaſs, quhair ony ſpecial partie or perſoun may have interes, and confeſſis the crime, and takis him to his remiſſioun or componitur thairfoir, he aucht and ſould at the ſame time find ſufficient cautioun and ſovertie befoir the Juſtice, for aſſythment and ſatisfactioun of the partie: And the ſaid partie

partie havand interes may call and perſew the ſaid ſovertie civillie befoir the civil Judge, for aſſythment and ſatisfactioun to be maid to him, and alſwa for the damnage, skaith and interes ſuſtenit be him throw committing of the ſaid crime: Bot gif the ſaid ſovertie was fund in ane actioun or cauſe of ſpuilzie or reif, he, as ſovertie, aucht and ſould be decernit to reſtoir and deliver agane to the perſewar his gudis and geir, gif thay be extant, or utherwayis the prices and avail thairof, togidder with the proffitis quhilk the perſewar micht have had of the ſaidis gudis and geir, fra the time of the ſpuilzeatioun and reif thairof, to the day of the geving of decrete for reſtitutioun of the ſamin, 10 *Mart.* 1500, William Keith *contra the Erle of* Caithneſs. 24 *Jan.* 1530, Gilbert Menzies *contra* Robert Lummiſden. *Vide multa exempla.* 12 *Decemb.* 1531, 1 *t. c.* 328. Bot gif the ſaid ſovertie, in actioun of ſpuilzie or reif, obliſt himſelf, and became ſovertie, for ſatisfactioun of the partie allanerlie, he may efterwart be callit befoir the civil Judge, for the principal gudis or prices thairof onlie, and on na wayis is bund and obliſt for the proffitis of the ſaidis gudis, quhilk the awner thairof micht have had the time that he wantit the ſamin. 23 *Maij*, 1533, Alexander Wardlaw *contra the Laird of* Duntreth, 1 *t. c.* 423.

C. XI. The ſovertie may call the principal for his releif.

GIF ony man becumis ſovertie and cautioun for ane uther befoir the Juſtice-general, for aſſythment and ſatisfactioun to be maid to the partie, and efterwart, befoir the civil Judge, is convict and decernit to pay the ſamin, he has juſt actioun aganis the principal partie for his releif, be ane ſimple charge, upon ſax dayis warning, without peremptour ſummoundis, or ordour of tabill, 11 *Julij*, 1543, 2 *t. c.* 145. Becauſe ane man takand him to his remiſſioun, in the juſtice air, for ony crime, and findand ſovertie for ſatisfactioun of partie, aucht and ſould releive his ſovertie thairanent; and his gudis and landis may be poindit and diſtrenzeit thairfoir: And gif he failzies to do the ſamin, he may be denuncit rebel, and put to the horn; in the quhilk cais his landis may be compriſit, and not his movabill gudis; becauſe the ſamin ar alreddie fallin in eſchete to the King, throw his rebellioun, 17 *Feb.* 1534, Johne Ramſay *contra* James *Lord* Ogilvie, 1 *t. c.* 466.

C. XII. FOR remeid of the fraud and diſordour uſit be Officiaris of armis, in executioun of criminal letteris. *Ja.* VI. *fol.* 10. *act.* 9. 20 *Octob.* 1579.

C. XIII. ANENT ſic as troublis thair nichtbouris be criminal perſute faikles. *Ja.* VI. *Ibid. act.* 12.

Anent challenge, and actioun for debt.

C. I. The maner how a man may clame his debt.

GIF debt be auchtand to ony man, the time of the payment be and bygane, he may rais ane ſummoundis, and thairby ſummound his debtour to compeir befoir the Schiref, or uther Judge competent, to ane certane day, to heir him decernit to mak payment of the ſaid debt: The quhilk day of compeirance beand cum,

and

and the debtour compeirand perſonallie in judgment, or be his procuratour, the creditour ſall ask and clame fra him his debt ſimplic, and without multitude of wordis; and the debtour ſall incontinent ather grant or deny the debt, or ſchaw ane reſſonabill cauſe quhy he ſould not pay the ſamin: And gif the debtour denyis the debt, the creditour ſall lauchfullie preive the ſamin; quhilk gif he failzies to do, the debtour ſould be decernit to be quyte, fred, and aſſoilzeit fra all payment of the debt acclamit. Bot gif the creditour preivis ſufficientlie the debt to be auchtand to him, the debtour ſould be decernit to mak him payment thairof within the ſpace of xv. dayis: And gif he failzies to mak payment within that ſpace, the Judge ſall cauſe his Officiar to poind, diſtreinzie and compriſe his movabill gudis and geir, and mak payment of the debt to the creditour, as effeiris of the law. *Item*, The like ordour and form of proceſs ſould be kept and obſervit, quhen the cautioner or borgh perſewis him for quhom he is ſovertie, to relieve him and keip him skaithles anent his burrow-gang: And the like, quhen ane deſyris ony man, his air or ſucceſſour, to fulfill and obey ony conventioun and contract maid betwix the perſewar and him to quhom the defendar is air and ſucceſſour. *Quon. attach. c.* 31, 64, 65, 66.

Anent advocatioun, and patronage of kirkis.

C. I. Advocatioun and patronage of kirkis.

QUHEN contraventioun or contraverſie aryſis betwix parties anent the laſt preſentatioun, quhilk of thame is in poſſeſſioun of the richt of the preſenting of ony perſoun to ane kirk, and it happin the kirk for the quhilk the contraverſie is movit to be vaikand at that time; in this cais inquiſitioun ſould be tane quhilk of thame did laſt preſent ony perſoun to the ſaid kirk: And gif ony of thame preivis, that he, or ony of his predeceſſouris, maid the laſt preſentatioun, he is thairby underſtuid to have provin lauchfullie that he is in poſſeſſioun thairof, and thairfoir has richt to preſent ony perſoun to the kirk then vaikand, or thairefter quhen it ſall happin to vaik; and the perſoun preſentit be him ſould reſſave inſtitutioun fra the Biſchop, gif he be qualifyit, and ſall bruik and joiſe the ſaid kirk induring his lifetime: And nevertheleſs, it is leaſum to the uther partie, aganis quhom the ſaid decrete of poſſeſſioun of the patronage is gevin, to intent and move actioun tuiching the ground richt and propertie of the ſaid patronage, as effeiris of the law. And ſuppois the ſamin be decernit to pertene to him, the perſoun quha is preſentit be him quha laſt was in poſſeſſioun of the richt of patronage and preſentatioun, ſall bruik and joiſe the ſaid kirk induring his lifetime, be virtue of his foirſaid preſentatioun. *De jud. c.* 100, 102, 103. *Lib.* 3. *c.* 27, 28.

C. II. Within quhat ſpace the patron ſould preſent.

ANE laique patron of ony kirk or benefice vaikand ſould preſent thairto ane qualifyit and habil perſoun, of ſufficient literature, honeſt in life, and of gude maneris, within four monethis; the quhilk gif he failzies to do, he be his lang delay, in his awin default, prejudgis himſelf anent his richt of preſentatioun, ſwa that the Biſchop,

ſchop, *jure devoluto*, thairefter has richt to preſent ony qualifyit perſoun to the ſamin kirk or benefice. *Lib.* 1. *c.* 17. *al.* 21.

C. III. The patronage may pertene to the ſuperiour be reſſoun of ward.

ITEM, The richt of preſentatioun and patronage may pertene to the ſuperiour be reſſoun of ward, ſwa that gif it happin the kirk to vaik induring the time of the ward, he may preſent ane qualifyit perſoun thairto, to bruik and joiſe the ſamin induring his lifetime: Bot the ſaid ſuperiour, nor his ſucceſſouris, has na powar to preſent ony perſoun thairto efter the time of the ward is expyrit and outrun. *Lib.* 1. *c.* 18. *De jud. c.* 100.

C. IV. A woman may have richt of patronage be reſſoun of dowrie.

IT is to wit, gif ony landis be gevin and aſſignit to ony woman in name of dowrie, in the quhilk thair is ony kirk foundit, ſcho, efter hir husband's deceis, has powar to preſent frelie to the ſamin, quhen it ſall happin to vaik, ane qualifyit perſoun: Bot ſcho may not give nor mortifie the ſamin to ony college or univerſitie; for thairby ſcho may not prejudge the richt and heritabill titill pertening to the air: Bot gif hir husband, in his lifetime, preſentit ane ſufficient perſoun to the ſaid kirk, he, induring his lifetime, ſall bruik and joiſe the ſamin be virtue of the ſaid preſentatioun, albeit the ſamin was gevin and grantit efter the making of the richt and titill to the ſaid woman, of hir dowrie: And gif the ſaid huſband, befoir his deceis, gave the ſaid kirk or benefice to ane religious houſe, efter his deceis his air is haldin to mak fré the ſaid kirk, and deliver the ſamin to the ſaid woman, ſwa that ſcho, in all hir lifetime, may have fré preſentatioun thairof; and efter the deceis of the ſaid woman, and of the perſoun quha is inſtitute be virtue of hir preſentatioun, the ſaid kirk ſall return to the religious place foirſaid, thairwith to remane perpetuallie in all time cuming. *Lib.* 2. *c.* 17. *De jud. c.* 112.

C. V. How the richt of preſentatioun may ceis.

GIF ony man, as air to his predeceſſour, clamis or alledgis that he has ony richt of patronage to ony kirk or benefice, the ſamin ſould on na wayis be decernit to pertene to him, gif it be ſufficientlie provin, that he, or his predeceſſouris, ſauld, annalzeit, or diſponit the land and heritage, to the quhilk the ſaid patronage is annexit, to ony perſoun. *Lib.* 3. *c.* 28. *De jud. c.* 100.

C. VI. Sentence of richt of patronage may not be retreitit.

IN actioun or cauſe of the richt of preſentatioun or patronage, gif the ſamin be decernit in the King's court to pertene to ony partie, his partie adverſar, aganis quhom decrete is gevin, ſall never be heard for recoverie of the ſaid richt, except ſum cauſe ariſe of new quhairfoir he ſould be heard to do the ſamin; becauſe all thingis that ar anis decretit, and finallie endit in the King's court ſould remane firm and ſtabill in all times thairefter. *De jud. c.* 104.

C. VII. Of injuſt patronis.

IT is ſtatute and ordanit, anent Clerkis bruikand and joiſand benefices, be richt and preſentatioun maid to thame be ſic alledgit patronis, quha violentlie, in time of war or peace, intrudit thameſelfis in the richt of preſentatioun, that thay ſall loſe and tine the ſaidis kirkis and benefices for thair time, thay beand perſewit and callit at ony man's inſtance to that effect; utherwayis, gif thay happin to bruik the ſamin peciabillie untill the time of thair deceis, thairefter the

the ſamin ſall return and pertene to the juſt and richteous patron. *De jud. c.* 103.

C. VIII. The patron ſould have the fundatioun in his keiping.

THE patron, havand the preſentatioun of ony benefices, chaiplanries, or prebendaries, aucht and ſould have the fundatioun, with all uther writingis pertening thairto, in his cuſtodie and keiping; and may obtene letteris of the Lordis, chargeand all intromettouris with, or with-halderis of the ſamin, to mak deliverance and reſtitutioun thairof to him within thré dayis. 16 *Junij*, 1548, *J. t. c.* 1099.

Of cauſis criminal.

C. I. Divers kindis of criminal actiounis.

A CRIMINAL actioun or cauſe is that quhilk tuichis ane pane of blude, of life, or limb: And ſum thairof pertenis to the King's crown or court, ſum to the Schiref-court, and ſum to Biſchoppis, Abbotis, Erlis, Baronis, and utheris frehalderis.

To the King's great court, or crown, pertenis the crime of treſſoun or leſe-majeſtie, as of the King's ſlauchter and deith, or deceipt of the realme, or of the hoiſt: And ſiclike, to his crown pertenis the cauſe of fraudful hyding or conceiling of ony hurd or theſaure. *Item*, The breking of the King's peace or protectioun, burning, reif, raviſching of women, murther, and all uther ſiclike treſpaſſis, the quhilk may be puniſt be deith, or cutting off and wanting of ony member. *Item*, The crimes of thift and manſlauchter pertenis and ſould be decernit be ane aſſiſe of nichtbouris befoir the Juſtice; for in this cais na certane perſewar compeirand to perſew, the King, or his Juſtice, may accuſe and perſew, *Lib.* 1. *c.* 2. *Leg. Foreſt. c.* 29. *Item*, The crime of foirſtalling, the crime of geving of falſe dome and judgment, of falſe money, of falſe weichtis, of falſe meſouris, of falſe inſtrumentis or evidentis, and of falſe aſſiſis commitand wilful errour, pertenis to the King's court, *Leg. foreſt. c.* 29.

To the Schiref pertenis the crime of thift and man-ſlauchter, quhen ane ſpecial perſoun compeiris to perſew. *Item*, Quhen ony Lord failzies to do juſtice, the Schiref, for thair default, may cognoſce anent tulzeing, ſtraikis and woundis, gif the perſewar alledge the King's peace to be brokin be committing of the crime, *Lib.* 1. *c.* 2. *De jud. c.* 11.

Item, Criminal actiounis in like maner pertenis to the courtis and juriſdictioun of ſum Biſchoppis, Abbotis, Erlis, Baronis, and utheris frehalderis, and ſpeciallie to thame quha has and haldis thair landis with ſok and ſak, pit and gallows thole, theme, infang-theif, and outfang-theif, exceptand the crimes quhilkis pertenis to the King's crown. *Lib.* 1. *c.* 3.

C. II. The perſewar and defendar ſould baith find ane borgh.

QUHASOEVER has ane actioun aganis ony man of thift, or of ſlauchter of ony of his freindis, and will perſew and accuſe him thairfoir, it behovis him to find ane ſure and ſicker borgh in the handis of the Officiar, that he ſall accuſe and purſue as accordis of the law; the quhilk beand done, the Officiar ſould attache him upon quhom the

the complaint is maid, and tak ſufficient borgh and pledge fra him, that he ſall compeir at ane lauchful day and place, and anſwer to the challenge and accuſatioun of his perſewar, *Mod. ten. cur. c.* 44. And gif the perſewar has not, nor may not find ane borgh, he ſall be put and haldin in ward and preſoun, untill the cauſe and actioun be endit as law will. *Leg. foreſt. c.* 14. *&* 38. *Stat. Alex. c.* 10.

C. III. The defendar ſould be ſummoundit upon fourtie dayis.

IT is to wit, that the defendar in criminal cauſis ſall have to anſwer the ſpace of fourtie dayis; becauſe ſic actiounis tuichis life and limb, and thairfoir requiris ane langer ſpace of time, and better adviſement, than in civil actiounis of wrang and unlaw, quhilk tuichis onlie bot winning and tinſel of gudis and geir, and indangeris not the life, or ony part of the bodie: And gif the defendar be chargit to ane ſchorter day, he may compeir in judgment, and deſire to have the ſpace of fourtie dayis, the quhilk ſould be grantit to him, and ſwa he ſould be ſummoundit agane of new upon fourtie dayis warning. *Mod. ten. cur. c.* 44.

C. IV. The defendar may uſe his lauchful defenſis.

THE partie defendar may, at the time of his compeirance and entrie in judgment, uſe and propone all and ſindrie his lauchful exceptiounis and defenſis aganis the perſewar, ſiclike as he micht do in ony civil actioun or cauſe, and that mair largelie nor in ony civil cauſis; for na cauſe is ſa tender to ane man as that quhilk tuichis life and limb, as cauſis of reif, thift, robberie, or man-ſlauchter; and thairfoir, gif he has ony lauchful exceptioun, and findis ony advantage thairby aganis the attachment, ſummoundis or proceſs, he may ask dome thairof, and paſs quite at that time, untill he be of new attachit lauchfullie thairto. *Mod. ten. c.* 44.

C. V. Modificatioun of the perſewar's harmis.

THE perſewar, in his libel or clame, may alledge, that he is skaithit throw the ſlauchter of his freind, or committing of the crime, be the defendar, to ane certane ſowme, ſic as ane thouſand pundis, or ony uther ſowme, mair or leſs, *Mod. ten. cur. c.* 45. And gif he alledge that he is skaithit, to ane unreſſonabill or ineſtimabill ſowme, the ſamin ſall be taxit and modifyit be honeſt men of the court, effeirand to the perſewar's ſtate and dignitie; and being ſwa modifyit, the defendar ſall find ane borgh to anſwer thairfoir. *Quon. attach. c.* 54.

C. VI. Of the defendar taxand his harmis unreaſonabillie.

ITEM, Gif ane perſewis ane uther for reif and thift, and putis in his clame a ſowme of money, for harmis and skaithis ſuſtenit be him thairby, the quhilk ſowme is greiter, and exceidis all the gudis and geir quhilk wer in his poſſeſſioun, pertening to him at the time of the doing of the ſaid skaith, and it be fund be ane aſſiſe that he had not ſa mekil gudis or geir at the ſaid time, nor zit ſufferit ſa mekil skaith, the partie defendar ſall paſs quite and fré. *Quon. attach. c.* 53. *Aſſiſ. Reg. David. c.* 9.

C. VII. How the defendar ſall purge himſelf aganis the King.

GIF ony man is accuſit be the King of ony felonie, or for life and limb, he ſall purge him thairanent be the knawlege of ane condigne and lauchful aſſiſe, of ſufficient and leill men of the ſchirefdome within the quhilk the crime is alledgit to be committit: And gif thay clenge him be thair aith, he ſall paſs quite; utherwayis

wayis he ſall ſuffer law and juſtice. *Quon. attach. c.* 60. *Aſſiſ. Reg. Dav. c.* 15.

Of leſe-majeſtie and treſoun.

C. I. Of treſoun, quhen na certane perſoun compeiris to perſew.

QUHEN ony perſoun is dilatit or defamit for leſe-majeſtie, as for the King's deith, or for decept of the realme, or of the King's hoiſt, and na certane perſoun compeiris to accuſe, bot the publict fame and brute accuſis him allanerlie, then, at the beginning and ariſing of the ſaid fame, he ſall be ſurelie attachit be ſicker borghis, or be impriſoning of his bodie; and thairefter the veritie of the mater ſall be tryit, and ſocht out, be divers and ſindrie inquiſitiounis and interrogatiounis befoir the juſtice, and be ſindrie conjecturis and probabilities, not makand or tendand directlie for him, or aganis him that is accuſit; and ſwa, be the apparent law of the land, (*per apparentem legem patriæ, i. e. per duellum, ut ego opinor*) he ſall be fylit, or fra that time clengit. *Lib.* 4. *c.* 1. *De jud. c.* 141.

C. II. OF perſouns ſclanderit or ſuſpect of treſoun. *Ja.* II. *fol.* 36. *act.* 54. 13 *Octob.* 1455.

C. III. Of treſoun, quhen ane certane perſoun compeiris to perſew.

QUHEN ony perſoun is accuſit of leſe-majeſtie, and thair compeiris ane certane accuſer to perſew him thairfoir, he quha compeiris to perſew ſall in the beginning be attachit be ſicker borgh, gif he ony may find, that he ſall perſew according to law: And gif he has na pledgis, he ſall mak faith to do the ſamin; for in ane actioun of treſoun, and all uther actiounis of felonie, the perſewar that may not find cautioun to perſew ſould be reſſavit and admittit to ſweir and mak faith, that he ſall lauchfullie accuſe his partie; the quhilk in ſic cauſis and crimes is reſſavit as ane law, to the effect thay quha wald accuſe ſould not be ſtayit or delayit to do the ſamin, for difficultie and feir of finding of borgh: And eſter that the accuſer has fund or maid the ſaid ſecuritie to accuſe, the defendar quha is accuſit ſall be attachit be ſure and ſicker borghis to compeir and underly the law at ane certane day: And gif he may not find ane pledge, he ſall be put in preſoun untill the cauſe be decidit, *Lib.* 4. *c.* 1. *De jud. c.* 126. 141. And gif he findis ony pledgis, ane day may be aſſignit to him to compeir and underly the law; and in the mene time the defendar may be dimittit and lettin paſs under the ſaid ſovertie, in this and in all uther cauſis of felonie, except in the cauſe of man-ſlauchter, in the quhilk the defendar ſould not be lettin away, or dimittit upon cautioun, to the effect that thairby men may be fearit and abſtene fra committing of man-ſlauchter, *Lib.* 4. *c.* 2. *De jud. c.* 141, 142. And the day of compeirance beand cum, the defendar may uſe his lauchful eſſonzies, and thairefter the accuſer may propone and alledge that he ſaw, or utherwayis certanlie underſtuid, that the defendar imaginit or inventit, or did ony thing anent the deith of the King, or committit ony uther crime of treſoun, or that he conſentit or gave counſal, help, or ſupport thairto, and offer him to preive the ſamin lauchfullie; the

quhilk gif the defendar denyis, it may be decidit be ſingular battel; for it is in the defendar's optioun and will, quhidder he will feicht or paſs to ane aſſiſe: And it is to wit, gif he chooſis battel, and the ſamin is lauchfullie waigit, (*nempe vadiis hinc inde datis in manum juſticiarii*, De jud. c. 91.) it is not leaſum to ather of the parties to eik or pair ony thing to that quhilk was ſpokin be thame in waiging of the battel, or zit to decline or cum aganis that quhilk thay have ſaid; the quhilk gif ather of thame dois, he ſall be haldin as overcome and convict: And mairover, it is not leaſum to thame to agré or be reconcilit with utheris, without licence of the King, or of his Juſtice. *Lib.* 4. *c.* 2. *Iter. Camer. c.* 8. *De jud. c.* 143.

C. IV. THAT na man rebel aganis the King's perſoun. *Ja.* I. *fol.* 1. *act.* 3. 26 *Maij*, 1424.

C. V. ALL men ſould aſſiſt the King to puniſh rebellis. *Ja.* I. *fol.* 1. *act.* 4. 26 *Maij*, 1424.

C. VI. THAT nane rebel aganis the King's perſoun, nor his authoritie. *Ja.* II. *fol.* 29. *act.* 14. 19 *Jan.* 1449.

C. VII. THAT na man of this realme bring hame poiſon, under the pane of treſoun. *Ja.* II. *fol.* 31. *act.* 32. 4 *Maij*, 1450.

C. VIII. THAT na ſtranger bring hame poiſon. *Ja.* II. *ibid. act.* 33.

C. IX. Quha may accuſe. IN the cauſe of leſe-majeſtie, it is permittit to ony man of perfeit age to accuſe; bot a woman in na mute or pley of felonie may accuſe, except in ſum ſpecial cauſis, as ſall be declarit efterwart. *Lib.* 4. *c.* 3.

C. X. The panis of the perſewar wrangouſlie accuſand. GIF the perſewar happinis to be convict, he ſall be thairfoir in the King's will, *Lib.* 4. *c.* 2. and procuris to himſelf the like puniſhment that he deſiris to be execute upon the defendar. *De jud. c.* 144. *Iter. Camer. c.* 28.

Item, The perſewar failzieand or ſuccumband in probatioun of his accuſatioun, ſall remane in the King's mercie thairfoir, and may be impreſonit at the King's will for his wrangous ſute. *De judic. c.* 149. *Iter. Camer. c.* 28.

C. XI. The pane of the defendar convict of treſoun. ALL gudis, landis, and uther geir, movabill and unmovabill, pertening to ony perſoun convict of treſoun, pertenis to the King allanerlie, without recovery of ony air, except be the King's ſpecial Grace, the ſaid tratour's air be reſtorit, and recover the ſamin, or ony part thairof. *Leg. Mal. Mac. c.* 4.

Item, It is ſtatute, gif ony perſoun be convict of the King's deith, deceipt of the realme, or of the King's hoiſt, or for the deith of his over-lord, of quhom he haldis his land in cheif, or for ony uther crime of treſoun, he and his airis ſall be perpetuallie diſheriſhit, als weill for the deith of his over-lord as for the King's deith: Bot gif the ſaid treſoun beis done aganis the King's perſoun, the ſaid tratour's air ſall be diſheriſhit perpetuallie of all landis quhilkis pertenit to the ſaid tratour, lyand within ony part of this realme; and

and alſwa, all and ſindrie the ſaid tratour's movabill gudis and geir ſall be confiſcate and imbrocht to the King's uſe: Bot gif the ſaid treſoun na wayis tuichis the King's perſoun, nor the realme, bot allanerlie the over-lord's perſoun, the committar thairof, and his airis, ſall be perpetuallie diſheriſhit of all and ſindrie landis haldin in cheif of the ſaid over-lord; bot his airis ſould not be diſheriſhit of uther landis and tenementis, quhilk the ſaid tratour's predeceſſour held of uther over-lordis, aganis quhom he committit na treſoun; for, efter his deceis, his air has gude richt and titill to recover all the ſaidis landis. *Lib.* 4. *c.* 1. *Aſſiſ. Reg. Dav. c.* 24. *Quon. attach. c.* 13. *Mod. ten. cur. c.* 22. *c.* 27. *in fine. De jud. &* 148.

RESETTOURIS of rebellis ſould be foirfaltit. *Ja.* I. *fol.* 7. *act.* 40. 12 *Mart.* 1425. C. XII.

DECLARIT tratouris may be ſlane; and quha querrelis the ſamin committis treſoun. *Mar. R. fol.* 147. *act.* 7. 29 *Maij*, 1551. C. XIII.

IT is ſtatute and ordanit, that nane of our ſoverane Lord's lieges, ſpiritual or temporal, of hie or law degré, ſend ony writingis or credence, be word, with ony perſounis, to thame that ar declarit the King's rebellis, in ony matter in time to cum, without licence of his Hienes askit and obtenit, nor reſſave ony maner of credence nor writing fra thame, except thay ſchaw the ſamin to his Hienes, under the pane of tinſel of life, landis and gudis. 22 *Aug.* 1516, *i. t. c.* 355. C. XIV. Of intercommuning with the King's rebellis.

GIF ony perſoun, beand oppinlie proclamit and denuncit rebel to our ſoverane Lord, and put to the horn, na debtour aucht and ſould mak to him payment of ony debtis auchtand to him befoir his denunciatioun, nor zit ſuffer ony Officiar to tak or poind ony gudis in his name thairfoir; bot rather, he beand enemie and rebel, as ſaid is, his perſoun may be takin and apprehendit be ony of our ſoverane Lord's lieges, and brocht in to the law, to be puniſt for his rebellioun: And gif he makis impediment in his taking, he may leaſumlie be ſlane, as commoun enemie to our ſoverane Lord and his ſubjectis. 20 *Junij*, 1550, *The Quene's Advocat, and* Andro Kilpatrik *contra* William Kilpatrik, 1 *t. c.* 699. C. XV. Na debtis ſould be payit to the credi-tour quha is denuncit rebel.

ANENT alienatiounis and diſpoſitiounis maid be perſounis convict, or that ſall happin to be convict of the ſlauchteris of our ſoverane Lord's father or Regentis. *Ja.* VI. *fol.* 2. *c.* 3. 28 *Aug.* 1571. C. XVI.

ANENT alienatiounis, reſignatiounis, and uther diſpoſitiounis, maid be ony burgeſſis within this realme, that has maid defectioun fra the King's authoritie. *Ja.* VI. *ibid. act.* 7. C. XVII.

GIF ony of our ſoverane Lord's lieges intentis ſummoundis aganis ane uther, concerning ony cauſe of heritage or debt betwix thame, and it happin the partie defendar to commit ony point of treſoun thairefter, the perſewar aucht and ſould have proceſs conform to his ſummoundis, notwithſtanding that the King's Hienes alledge C XVIII. Anent him quha is perſewit for ony cauſe, and thairefter happinis to commit treſoun.

alledge the ſamin to be prejudicial to the richt of his crown, in reſpect of the treſoun alledgit to have bene committit be the partie defendar; becauſe the defendar, be the alledgit committing of the treſoun aganis the King's majeſtie, was *præventus citatione*, at the inſtance of the perſewar; and ſwa the committing of the treſoun aganis the King's majeſtie ſould not be prejudicial to the perſewar, quha callit and perſewit the defendar the time that he was the King's fré liege. *5 Julij*, 1546, Johne *Lord* Glamis *contra* James Kirkcaldie *of* Grange, 1 *t. c.* 631.

C. XIX. Anent taking of the King's rebellis.

THE King's letteris beand direct to the Schiref, or ony uther Schiref in that part, or uther the King's Officiar, chargeand all the lieges and indwellaris within the ſchirefdome to paſs in companie with him, to ſearch, ſeik, tak, and apprehend ony man, beand rebel, and at the horn, quhairever he may be gottin, and, gif neid beis, to raiſe fire, and uſe all uther meanis poſſibill, in cais of his reſiſtance, or to eſchete and imbring to our ſoverane Lord's uſe all his movabill gudis, be reſſoun of his rebellioun; and to that effect, gif neid beis, to mak opin duris; and quhatever be done be thame in executing of the ſaidis letteris, and aſſiſting the Schiref, or King's Officiar, at command of the ſaidis letteris, nane of thame may be efterwart, in ony time cuming, callit or perſewit for raiſing of fire, burning of houſis, ſpuilzeing of ony gudis pertening to the ſaid rebel, or for ony uther thing, or alledgit wrang done be thame in aſſiſting the Schiref, or ony uther the King's Officiar, for the effect foirſaid. 20 *Junij*, 1544, Kinfaunis *contra* Strowie *and utheris*. 21 *Mart.* 1566, William Lauder *contra* Cuthbert Cranſtoun, 1 *t. c.* 735.

C. XX. Of gudis pertening to outlawis.

GIF ony man intromet with ony nolt, ſcheip, or uther gudis, pertening to ony of our ſoverane Lord's lieges, believand and truſtand that the ſaidis gudis and geir pertenit to ony of our ſoverane Lord's rebellis and outlawis, he aucht and ſould reſtoir and deliver the ſamin agane to the awner thairof; bot becauſe he tuke thame, believand that thay wer outlawis gudis, and for na uther cauſe, he aucht not to be indytit in the juſtice air, and on na wayis accuſit criminallie thairfoir, 6 *Septemb.* 1504, Margaret Johnſtoun *contra* Johne Kilpatrik. Becauſe it is leaſum to ony of the King's lieges to tak or intromet with ony gudis or geir pertening to outlawis, quhair thay may be apprehendit, to be furthcumand to the King's uſe, and his theſaurar, or donatar, as effeiris. *Ult. Aug.* 1504, Margaret Johnſtoun *contra* Thomas Kilpatrik, 1 *t. c.* 210.

Anent burning and fyre.

C. I. Four pointis of the crown.

THAIR ar four pleyis or mutes quhilkis ar callit commounlie the four pointis of the crown, becauſe thay pertene to the King's crown allanerlie, and ſould be decernit and decidit in his court, *viz.* murther, (quhilk ſall be declarit efterwart) burning, robberie or reif, and raviſching and deforcing of women. *Leg. Mal. Mac. c.* 4. *Lib.* 4. *c.* 13. *Aſſiſ. Reg. Dav. c.* 1.

ANENT

ANENT unlawis and panis for burning. *Ja.* I. *fol.* 12. *act.* 81. 11 *Mart.* 1426. *Vide in eodem parliamento, cap.* 82, 83, 84, 85. C. II.

THE crime of wilful and malicious fire ſall be decernit and treatit in all thingis in maner and form efter ſpecifyit of man-ſlauchter, and in maner and form abone ſpecifyit of leſe-majeſtie. *Lib.* 4. *c.* 8. *De jud. c.* 154. C. III. Of burning, and wilfull fire.

ANENT burning of cornis, raiſing of fire, and raviſhing of women. *Ja.* V. *fol.* 140. *act.* 99. C. IV.

ANENT the raiſing of fire, and burning. *Ja.* VI. *fol.* 22. *act.* 41. 15 *Decemb.* 1567. C. V.

GIF ony perſoun wilfullie or maliciouſlie raiſis ony fire, quhairwith uther men's dwelling-houſis, inſicht, cornis, or ony uther gudis and geir, is brunt and conſumit, he may be callit and perſewit civillie thairfoir, at the inſtance of the partie skaithit, for redreſs to be maid to him thairanent; and the deid beand lauchfullie provin, the quantitie and eſtimatioun of the skaith ſould be referrit to the aith of the perſewar. 10 *Feb.* 1545. 10 *April.* 1546, 1 *t. c.* 1088. C. VI. He quha raiſis fire wilfullie, may be civilie accuſit thairfor.

GIF fire, beand negligentlie kendlit, or raiſit, brekkis, and paſſis out of ony man's houſe, and burnis his nichtbour's houſis, ane or ma, he, furth of quhais houſe the fire did paſs, ſould not be vexit nor perſewit thairfoir; for he has alreddie skaith and ſorrow aneuch throw the burning of his awin houſe: And the like is to be underſtuid of ony man's kiln burning be the fire paſſand furth of ane uther man's houſe, as ſaid is; and the ſervandis, be quhais negligence the fire was raiſit, ſall get thair leave, and tyne thair ſervice: Bot gif ony man happin to borrow ane uther man's kiln, and it happin the ſamin to be brunt induring the time of the borrowing, he quha borrowit the ſamin is haldin to mak reſtitutioun thairof: Bot gif ony man hyris ane uther man's kiln for ſilver, and the ſamin happinis to be brunt induring the time of the hire, without ony fault committit be him thairanent, he quha hyrit the ſamin ſall pay nathing thairfoir. *Leg. burg. c.* 53. C. VII. Of burning and fire-raiſing be chance.

Item, Gif fire brekis out of ony man's houſe, and burnis ane uther man's cornis in the feildis, barn-zaird, or in the barn, he that firſt raiſit the fire ſall mak amendis and ſatisfactioun for the damnage and skaith done be the ſaid fire. *De jud. c.* 42. *Stat.* 2. *Rob. Bruce.*

GIF it happin that ony man be paſſand in the King's gait or paſſage, drivand befoir him twa ſheip feſtnit and knit togidder, be chance ane horſe, havand ane ſair bak, is lying in the ſaid gait, and ane of the ſheip paſſis be the ane ſide of the horſe, and the uther ſheep be the uther ſide, ſwa that the band quhairwith thay ar bund tuich or kittle his ſair bak, and he thairby movit dois ariſe, and caryis the ſaid ſcheip with him heir and thair, untill at laſt he cumis and enteris in ane miln havand ane fire, without ane keipar, and ſkatteris the fire, quhairby the miln, horſe, ſheep, and all, is brunt; *Quæritur*, C. VIII. A merrie queſtioun anent the burning of a miln.

ritur, Quha ſall pay the skaith? *Reſpondetur*, The awner of the horſe ſall pay the ſheip, becauſe his horſe ſould not have been lying in the King's hie-ſtreit, or commoun paſſage; and the millar ſall pay for the miln, and the horſe, and for all uther damnage and skaith, becauſe he left ane fire in the miln, without ane keipar. *Aſſiſ. Reg. Dav. c.* 81. *Ex lib. Sconen. in impreſſo. c.* 26. *Stat. Dav.* II.

Anent raviſhing of women.

C. I. How this crime ſould be followit.

RAVISHING is quhen ane woman alledgis that ſcho is deforcit be ane man aganis the King's peace; and the woman to quhom ſic ane crime is committit, ſould incontinent thairefter, quhill as zit the crime is recent, paſs to the nixt town, and thair ſchaw to honeſt men the injurie done to hir, and the blude, gif ony was drawin, als weill in hir bodie under hir claithis, as in hir face, togidder with hir revin claithis, gif ony be; and thairefter ſcho ſall paſs fordwart on the King's way to the Schiref of that ſchirefdome, or to the Coroner, gif he may be had, and ſchaw the ſamin to him in maner abone ſpecifyit; and fra thyne furth ſcho ſall paſs fordwart on the King's way, to the cheif caſtel, or cheif Lord of the ſchirefdome in the quhilk the treſpaſs was done, and thair ſchaw him all the deid as is aforeſaid; and efter that, ſcho ſall oppinlie declair, and mak manifeſt, the ſaid crime in the nixt ſchiref court: And then, the plaint beand maid befoir the Juſtice, richt and juſtice ſall be done to the complenar, in the ſamin ordour and maner of proceſs, as is afore ſaid of the crime of leſe-majeſtie, *Lib.* 4. *c.* 9. *De jud. c.* 149. Bot it is to wit, that the ſaid woman that is raviſhit ſall not be heard to complene or accuſe for the felonie done to hir, gif it be ſufficientlie provin that ſcho delayit the ſpace of ane nicht to mak ſhout in maner abone expremit; and mairover, ſcho, for hir delay, ſall be in the King's amerciament, and he quha forcit hir ſall paſs fré and quite for that crime. *Stat. Will. c.* 9. *Quon. attach. c.* 48.

C. II. The defendar may not marie the woman deforcit.

GIF ony perſoun is convict to have deforcit and raviſhit ony woman, the ſamin ordour and maner of judgment ſall be kept and execute aganis him, as is ſpecifyit in the crimes abone reherſit: And it is na wayis leaſum to him quha is convict to have deforcit ane woman, and to have defylit hir, thairefter to marie hir as his lauchful wife; for gif that wer leaſum, it micht happin, that cairles, and men of mean conditioun, micht, be the cauſe and occaſioun of ane pollutioun or raviſhing, perpetuallie be mariage fyle ane maiſt honeſt woman; and alſwa ane filthie woman micht do the ſamin to the gentleſt man, to the great ſhame of thame, thair parentis and freindis; nevertheleſs he quha has raviſhit ane woman, and as zit is not convict thairof, may leaſumlie marie hir, gif ſcho pleaſe, with licence of the King, or his Juſtice, and with conſent of hir parentis. *Lib.* 4. *c.* 9.

Anent

Anent robberie.

C. 1. Of robberie or reif.

THE crime of reif, with all thingis ſpeciallie pertening thairto, ſould be decernit and decidit befoir the Juſtice, and ſould be followit with recent ſhout and cry, in the ſamin maner as ſaid is tuiching raviſhing of women, *Lib.* 4. *c.* 8. *De jud. c.* 154. And gif ony perſoun fallis in the handis of reiveris, and is thairefter deliverit thairfra, he ſall in all poſſibill haiſt mak ſhout fra ane town or village unto ane uther, paſſand to the King's caſtel in the ſchirefdome, within the quhilk the reif is committit, in the ſamin maner and form as is uſit in the crime of raviſhing of women. *Lib.* 4. *c.* 42.

Item, It is ſtatute, that na man be heard to perſew for robberie or reif done to him, bot gif he mak lauchful ſhout, *viz.* declarand and makand manifeſt the robberie committit aganis him to the Baron, or in the baronie, or to the King's Serjand, in the ſamin day or nicht that the deid was done: And gif he delayis abone the ſpace of ane day and ane nicht, to ask counſal at his freindis, and ſwa perſewis not the crime recentlie, the defendar ſall paſs fré and quite; and he to quhom the ſaid reif is done, ſall remane in the King's amerciament. *Stat. Will. c.* 9. *Quon. attach. c.* 48.

Anent ſlauchter.

C. 1. The form and ordour of proceiding be the law of *Clan-makduf*.

TILL all and ſindrie to quhais knawlege thir preſent letteris ſall cum, *David Barclay*, ſone and appeirand air to *David Barclay* of *Cullernie*, depute to Sir *Johne Sibbald* Stewart of *Fife*, greiting: Sen it is neidful and meritabill to beir ſuithfaſt witneſs in the ſuithfaſtneſs, and ſpeciallie in tha thingis quhilk may ingender prejudice to the innocent, that is, that I the ſaid *David* declair, and beir ſuithfaſt witneſs, that upon the xij. day of *September* 1548, compeirit befoir me, at the mercat-cros of the burgh of *Coupar* of *Fife*, *Alexander Spens*, ſone and appeirand air to *Matthow Spens* of *Wolmerſtoun*, and in preſence of mony worthie Lordis, and divers utheris, exhortit and chargit me, that throw mercie of my office I ſould reſſave him to the law of *Clan-makduf*, efter the law of the ſamin, and uſe of the countrey, for the ſlauchter of umquhile *John Kynninmouth*. The quhilk petitioun be me heard and underſtuid, and being rypelie adviſit with divers of the tenentis, and utheris worthie folkis of the erldome of *Fife*, I thocht and conſiderit, that his petitioun was conſonant to the law and uſe of the countrey; for the quhilk I grantit and conſentit to reſſave him to the ſaid law and uſe of the countrie, he findand ſovertie and borghis thairfoir as effeirit; that is to ſay, that he was of the kin of *Clan-makduf*, he fand *Thomas* Lord *Erskine* borgh and ſovertie for him; and ſecundlie, that he aucht to have the privilege of the law of *Clan-makduf*, he fand *John Stewart* Lord of *Lorn*; and the thrid, that he ſould underly the law of *Clan-makduf*, quhen and quhair it effeirit, he

and

and his borghis beand lauchfullie warnit thairintill, he fand Sir *John Melvil* of *Raith*, Knicht, ſovertie. The quhilk thing beand thus done, I reſſavit the ſaid *Alexander* to the ſaid law, be the mercie of my ſaid office, and then incontinent be ane wand I gave him the King's peace, forbidding expreſlie, upon the King's behalf, that ony man ſould do the ſaid *Alexander* ony injurie or wrang, in his perſoun or in his gudis, bot as the courſe of the commoun law will, and under the pane of the foirfalting of the privilege of the ſaid law: Of the quhilk all and findrie thingis abone expremit, befoir divers witneſſis, the ſaid *Alexander* askit at me my teſtimonial into writ. In witneſs of the quhilk thing, becauſe I had not my awin ſcill preſent, I procurit with inſtance the ſeill of my father foirſaid, to be ſet to this my preſent teſtimonial, at *Coupar*, day, zeir, and moneth foirſaidis, and befoir thir witneſſis, thay ar to ſay, Sir *Henrie Douglas* of *Lochlevin*, Knicht, *Archibald Steuart* Alderman of the ſaid burgh of *Coupar*, *Robert Barclay* my father brother, and *Robert Steuart* ſone to the ſaid *Archibald*, with utheris divers.

C. II. Twa kindis of man-ſlaughter.

THAIR ar twa kindis of man-ſlauchter, the ane is callit murther, and the uther callit ſimple ſlauchter. Murther is done privatlie, na man ſeand nor knawand the ſamin bot allanerlie the ſlayer and his complices, ſwa that the cry of the people followis not ſuddenlie thairupon, as is uſit in the law of ſlauchter. *Lib.* 4. *c.* 7. *De jud. c.* 154.

Item, Quhen ony perſoun has committit publict or privat murther, he may be incontinent followit and perſewit with hoy and cry; and gif he beis apprehendit, he ſall be put in priſon, and ſall not be lettin furth upon cautioun, except he be lettin to borgh be the King's licence in writ, and ſall anſwer to the Juſtice at his thair coming; and the Coroner, the Schiref, or the Proveſt, ſhall viſie the bodie of him quha is murtherit, and the woundis thairof, and ſall cauſe his Clerk imbreve the ſamin in writ, and thairefter cauſe burie the bodie. And it is to wit, that na ſlauchter done be chance or chaud-melle, ſould be callit murther; for all murther is committit be foirthocht felonie. Privat murther is quhen ane is ſlane or drownit, or utherwayis put down privatlie, and is fund in ony place, quhairof the finder ſall raiſe the hoy and cry, as ſaid is; and the Schiref or Coroner ſall cum and viſie the bodie in maner foirſaid, and ſall tak inquiſitioun of the ſuſpitioun anent the ſaid murther: And gif ony perſoun beis fund ſuſpect, he ſall be attachit and impriſonit, as ſaid is: And gif na perſoun beis fund ſuſpect, na attachment ſall be maid thairfoir, and the deid bodie ſall be buryit at command of the Schiref or Coroner. *Mal. Mak. c.* 2. *De jud. c.* 161.

C. III. The maner of accuſatioun, and quha may accuſe for murther.

IN accuſatioun of murther, na perſoun may be admittit to accuſe, except he be of kin and blude to him that is murtherit; and he that is narreſt of blude to him, or to the ſtok, ſall exclude him quha is of farder degré fra accuſatioun: Bot gif murther be dilaitit, and fund be way of dittay, then our ſoverane Lord the King ſall perſew and follow, untill the ſamin be decernit and endit be judgment. *Lib.* 4. *c.* 7. *De jud. c.* 154.

THAIR

THAIR is ane uther kind of man-ſlauchter, quhilk is callit *ſimple ſlauchter*, for the quhilk gif ony man be accuſit, the form of proceſs ſall be ordanit in the ſamin maner, and efter the ſamin diſtinctioun, quhilk we have alreadie declarit in the titill of leſe-majeſtie. And it is to wit, that he quha is accuſit and attachit for ſlauchter, ſall not be lettin fré upon cautioun to ony dayis, bot gif the ſamin be done be ſpecial diſpenſatioun or benefit of the King's Hienes. *Lib.* 4. *c.* 5. *Mal. Mak. c.* 2. *De jud. c.* 154.

C. IV. Of the ſecund kind of ſlauchter, callit ſimple ſlauchter.

ITEM, In actioun of ſimple ſlauchter, na perſoun ſould be admittit to accuſe, bot gif he be of kin and blude to him that is ſlane, or joinit be homage: Alſwa the wife may be heard to accuſe for ſlauchter of hir husband, for ſcho and hir husband wer bot ane fleſch: And it ſall be in the optioun and will of him quha is accuſit, ather to ſuffer and underly the probatioun to be led and deducit aganis him be the woman, or be judgment of ane gude aſſiſe, to clenge or fyle him of the crime quhairof he is accuſit. *Lib.* 4. *c.* 7. *De jud. c.* 154.

GIF ony man, beand accuſit at ane uther's inſtance, for reif, thift, or ony uther treſpaſs, is convict thairof in judgment, and put to deith, and thairefter ony of the freindis or favouraris of him quha is juſtifyit, deſirous to revenge his deith, ſlayis him at quhais inſtance the ſaid treſpaſſour was accuſit to the deith, he may be callit and accuſit thairfoir at the King's inſtance, and ſuffer deith as brekkar of the King's peace, without ony remiſſioun to be grantit to him, except the ſamin be gevin and grantit to him be the King, with conſent of the freindis of him quha is ſlane: And gif it happinis that the King, without thair conſent and knawlege, gevis him ane remiſſioun, and grantis him his peace, it ſall be leaſum, notwithſtanding thairof, to the freindis and kinniſmen of him quha is ſlane, to perſew and accuſe him quha committit the ſaid ſlauchter, like as gif the ſaid remiſſioun or peace had never bene grantit. *Lib.* 4. *c.* 16. *Quon. attach. c.* 58. *Aſſiſ. Reg. Da. c.* 14. *Stat. Alex. c.* 24.

C. V. Slauchter committit in contemptioun of the King, and of the law.

IT is ſtatute and ordanit, for ſa mekil as divers and ſindrie times wickit and ungodlie perſounis ſlayis peciabill and richteous men, for envy, or be wickit procuring and deſire of utheris, or throw luif of thair wives, and covetouſneſs of thair landis, and uther gudis, and thairthrow has obtenit and enterit in poſſeſſioun of the landis, gudis and geir of him quhom thay have ſlane; and to the end thay micht the mair peciablie obtene and bruke the ſaid poſſeſſioun, thay maiſt cruellie ſlay the bairnis, parentis and freindis of him quhom thay ſlew of befoir, as ſaid is; that in cais the ſaid treſpaſſouris happin to be receptit, helpit or ſupplyit be ony Erle, Baron, or ony uther of our ſoverane Lord's lieges wickitlie aganis the law of God and of man, quhair it is ſaid, *He that ſlayis with the ſword, ſall be ſlane thairwith*, the receiptar of the ſaid treſpaſſour ſall be callit and accuſit at the King's inſtance, in the ſamin maner as the principal committar of the crime; for all Erlis, Lordis, Baronis, or utheris lieges, that dois ony ſic thing, ar fals and menſworn to the King and his lawis. *Mal. Mak. c.* 4.

C. VI. Of him quha ſlayis the huſband for luif of his wife, and deſire of his geir.

C. VII. Of the huſband accuſit for the wife's ſlauchter.

IT is ſtatute and ordanit, that the husband may not be accuſit for the ſlauchter of his lauchful wife, bot gif it be ſufficientlie provin that he ſlew hir, or woundit hir, throw the quhilk wound ſcho thairefter deceiſſit; for it is to wit, that it happinit in King *David*'s dayis, that ane man of gude brute and honeſt fame, havand ane wife of greit blude and parentage, movit with gude zeale, and thinkand to chaſtiſe and correct hir, gave hir ane cuf allanerlie, quhairwith ſcho was ſa vehementlie commovit and troublit, that for requeiſt of na perſoun ſcho wald nather eat nor drink, and ſa ſcho deceiſſit and departit out of this warld; quhairfoir hir freindis and kinniſmen callit and perſewit hir husband for hir ſlauchter befoir the King; bot becauſe it was notoriouſlie knawin that he ſlew hir not, nor zit gave hir ony deidlie wound, bot allanerlie gave hir ane cuf, thairby correctand and inſtructand hir, and alſwa beirand ſic favour and affectioun to hir, to the time of hir deceis, as ane loving huſband ſould beir and do to his wife, the King aſſoilzeit and clengit him fra the ſlauchter of his wife, and thairfoir maid this law and ordinance thairanent. *Aſſiſ. Reg. Da. c.* 33. *al.* 41.

C. VIII. Slauchter of the memberis of ſeſſioun.

IT is ſtatute and ordanit, that quhatſumever maner of perſoun invadis, ſlayis or hurtis cruellie ony Senatour, Advocat, or Scribe of our ſoverane Lord's ſeſſioun or college of juſtice, thay ſall be callit and accuſit as committaris of the crimes of leſe-majeſtie, and puniſt thairfoir. 13 *Feb.* 1543, *M.* Robert Galbraith *contra* Johne Karkettill, 1 *t. c.* 593.

C. IX. Of ane ſlane with a horſe fute.

GIF ane horſeman is riding in ony town or way, and it happin his horſe to tramp, or utherwayis hurt with his forder fute, ony man beand befoir him, and thairthrow the man happin to deceis, he quha was riding on the horſe, and ſufferit his horſe to do ſic ane treſpaſs, may be callit and accuſit thairfoir, as gif he had ſlane him with his awin handis: Bot gif his horſe trampis and ſtrikis ony man cumand behind him, with his hinder-feit, ſa that thairthrow he deceis, he quha was riding upon the horſe ſall not be accuſit thairfoir, bot is allanerlie haldin of the law to give the fourt fute of the horſe that ſtrak the man to the deith, or ellis the fourt part of the price of the horſe to the friendis of him that is ſlane; and gif thay refuſe to tak the ſamin, he ſould deliver to the Schiref of the ſchire quhairin the crime was done; for of the law of this realme ilk man riding upon horſe ſould keip fra doing skaith the forder feit of his horſe; and thay that cumis behind the horſe ſould keip thameſelfis fra his hinder feit. *Lib.* 4. *c.* 37.

C. X. Slauchter done be ane quha is furious.

ALL wod and furious perſounis ſould be takin, apprehendit, and keipit be thair kinniſmen; the quhilk gif thair kinniſmen may not do, the Juſtice or Schiref of the province is haldin to tak thame, and put thame in preſoun: And gif ony furious perſoun ſlayis ony man, inquiſitioun ſould be takin, quhidder he did the ſamin be feinzeit and diſſimulat wodnes, or utherwayis: And gif it be fund that he did the ſamin in furie, he ſall be put in keiping, as ſaid is: And gif thairefter he commit ony evil or skaith, be negligence or fault of the keipar, the ſamin ſall be imputit to him quha ſould have kept him. *De oblig. c.* 10.

OF

OF ſlauchter of foirthocht felonie, and ſuddantie, and fleing to girth. *Ja.* III. *fol.* 53. *act.* 43. 20 *Novemb.* 1469. C. XI.

HE quha is fugitive for ſlauchter ſould be opinlie proclamit, and his receptaris puniſht. *Ja.* I. *fol.* 15. *act.* 101. 1 *Julij*, 1426. C. XII.

ITEM, Gif ony man ſlayis ane uther, and efterwart is fugitive, and compeiris not to underly the law thairfoir, the King may ſeik out and take all his landis in his handis, and hald thame be the ſpace of ane zeir and day, within the quhilk time the King may give him remiſſioun for the ſlauchter, and mak reſtitutioun of his landis to him, gif he pleiſis: And gif he is fugitive, and withdrawis him fra the law, zeir and day being bypaſt, his over-lord, having court of ſlauchter, ſall recover the ſaidis landis out of the King's handis, and ſall hald the ſamin in his awin handis, ſa lang as the man-ſlayer is livand, ſuppois the King, efter the ſaid zeir and day, has grantit him grace and remiſſioun for the ſlauchter: And efter the man-ſlayer's deceis, his air, be the law of the land, ſall recover the landis furth of the over-lord's handis. And gif the ſamin over-lord happinis to be at that time in the King's ward be reſſoun of his les age, the man-ſlayer's landis ſall in like maner pertene to him be reſſoun of ward, albeit zeir and day be outrun: And gif the King, induring of the ward, give and diſpone the ſamin landis, as his eſchete, to ony perſoun, the donatar, to quhom the ſamin is gevin, ſall bruke and joiſe the ſamin induring the ſaid man-ſlayer's lifetime, ſuppois, befoir his deceis, the ſaid ſuperiour, quha was in the King's ward, happinis to cum to perfeit and lauchful age, and thairfoir has recoverit his landis, quhilk wer in the King's handis be reſſoun of ward; for eſchete is movabill, and may be gevin be him quha has powar for the time to give the ſamin: Bot it is to wit, that gif the ſaid man-ſlayer's landis, quhilkis pertenit to the King be reſſoun of eſchete, had bene in the King's handis ungevin and undiſponit at that time, quhen the over-lord cumand to perfeit age recoverit his landis furth of the King's handis, the ſaid over-lord ſould in like maner have recoverit the eſchete landis, togidder with his awin proper landis of heritage. *Quon. attach. c.* 12. *Mod. ten. cur. c.* 13. C. XIII. Of him quha is fugitive for ſlauchter.

OF ſlauchter in the baronie. *Ja.* I. *fol.* 15. *act.* 102. 1 *Julij*, 1426. C. XIV.

OF ſlauchter in burgh. *Ja.* I. *fol.* 16. *act.* 103. *eod.* C. XV.

OF ſlauchter in regalitie, and the Officiaris thairof. *Ibid. act.* 104. C. XVI.

OF the Lord of regalitie, and Magiſtratis within burgh, negligent of thair offices. *Ibid. act.* 105. C. XVII.

OF inquiſitioun of foir-thocht felonie to be takin be ane aſſiſe. *Ibid. act.* 106. C XVIII.

OF the fugitoure in foir-thocht felonie, fra burgh to land. *Ibid. act.* 107. C. XIX.

THE

C. XX. THE countreymen not aſſiſtand the Schiref, ſould be puniſht. *Ibid. act.* 109.

C. XXI. MEN-SLAYERIS chargit upon ſix dayis, and not compeirand, ſould be denuncit rebellis. *Ja.* III. *fol.* 75. *act.* 120. 1 *Octob.* 1487.

C. XXII. THE man-ſlayer ſould not be relaxit, except he find cautioun. *Ja.* III. *fol.* 55. *act.* 53. 8 *Aug.* 1471. *Ja.* III. *fol.* 53. *act.* 42. 20 *Novemb.* 1469.

C. XXIII. ANENT man-ſlaycris takin or fugitive, and of demembratioun. *Ja.* IV. *fol.* 91. *act.* 50. 18 *Maij*, 1491.

C. XXIV. ANENT the taking of the King's rebellis, of the mantening and reſſetting of thame. *Ja.* V. *fol.* 135. *act.* 76. 14 *Mart.* 1540.

C. XXV. ANE man-ſlayer may be relaxit, upon cautioun to ane certane day, and beand thairefter denuncit rebel, the dayis of relaxatioun ar eſtemit dayis of rebellioun. *Mar. Reg. fol.* 139. *act.* 4. 20 *Junij*, 1555.

C. XXVI. ACT maid anent the ſlauchter of parties, in perſute and defence of thair actiounis and cauſis. *Mar. Reg. fol.* 162. *act.* 14. *eod.*

Of aſſythment for ſlauchter.

C. I. The cauſe quhairfoir aſſythment or kinbuit ſould be payit.

BE the law and conſuetude of this realme, the aſſythment or kinbuit maid or adjudgit to be payit be the committaris of ſlauchter, to the kin, bairnis and freindis of ony perſoun that is ſlane, is gevin to thame in contentatioun of the hurt, damnage and skaith ſuſtenit be thame throw the wanting of the perſoun that is ſlane, and for skaith incurrit be thame thairthrow, and for pacifying of thair rancor: And gif the committar of the ſlauchter doburſis or diſponis ony ſowme of money, in almons, *vel in alios pios uſus*, be reſſoun of the ſaid ſlauchter, the ſamin aucht not to be allowit nor defalkit to him in the aſſythment, without adviſe and conſent of the partie to quhom the aſſythment is maid, or adjudgit to be maid. 1 *Mart.* 1539, *The bairnis of* James Steuart *contra* Robert Steuart, 1 *t. c.* 505.

C. II. A baſtard ſould have na part of the aſſythment gevin for his father's ſlauchter.

ANE baſtard ſone or dauchter may not perſew for aſſythment to be maid and adjudgit to him, in all or in part, for the ſlauchter of his father, or ony kinniſman on his father's ſide, albeit he be callit and legittimat; *quia de jure non intelligitur habere patrem certum.* 27 *April.* 1555, John Montgomerie *contra* Thomas Barclay. 26 *Julij*, 1555, Andro Falconer *contra* William Maxwell, 1 *t. c.* 743.

C. III. A baſtard ſould have part of the

THE bairnis, als weill baſtardis, being maill or femaill, as the bairnis lauchfullie gottin, ſould be participant of the aſſythment decernit and adjudgit for thair father's ſlauchter: Bot the ſamin ſould

ſould not be dividit equallie amangis thame; becauſe the lauchful bairn ſould have twiſe als mekil as the baſtard, or utherwayis at the diſcretioun of the Judge. 23 *Junij*, 1542, *The bairnis of* David Foreſt *contra Laird of* Clerkingtoun, 2 *t. c.* 112. aſſythment gevin for his father's ſlauchter.

ASSYTHMENT, or amendis for ſlauchter or mutilatioun, aucht to be payit to the narreſt of kin to him that is ſlane or mutilat, and ſould be modifyit be the Judge, ſumtimes mair, ſumtimes leſs, efter the ſtate of the crime, the committar's ſubſtance and riches, and alſwa conform to the ſtate of him that is ſlane or mutilat, and the nombre and age of his bairnis; and the air ſould have his part thairof with the reſt of the bairnis, bot not ſa mekil as ony ane of thame; and the dauchter of him that is ſlane, not being maryit the time of his ſlauchter, ſould reſſave twiſe als mekil as ony of the ſones. 26 *Jan.* 1533. 28 *April.* 1534. And likewiſe the wife ſould have hir part with the bairnis 1 *Feb.* 1452. 13 *Junij*, 1533, *N.* Hutchoun *contra* James Makdull. 3 *Feb.* 1532, Michaell Fraſer *contra* James Pyot, 1 *t. c.* 929. C IV. To quhom, and how aſſythment ſould be gevin.

IN all cauſis quhairin aſſythment is decernit and adjudgit to be payit to the bairnis allanerlie of him that is ſlane, the ſamin ſould be diſtribute amangis the bairnis that ar on life the time of the making of the aſſythment; and the airis of the uther bairnis that ar deceiſt ſen thair father's ſlauchter, ſould have na part thairof, 4 *Feb.* 1551. Bot gif ony of thame in his lifetime maid ony aſſignay to his part thairof, and gif lauchful intimatioun was maid of the ſaid aſſignatioun, the ſaid aſſignay has gudé richt and titill thairto; becauſe it is leaſum to ony man to mak a ceſſionar and aſſignay to his part of the aſſythment for his father's ſlauchter or freind's. 28 *April.* 1534, 1 *t. c.* 1135. C. V. Anent payment of aſſythment to the bairnis.

GIF ony man that is kinniſman to him that is ſlane, perſew, at his awin inſtance allanerlie, for aſſythment to be gevin to him, and intentis not the actioun likewayis at the inſtance of the remanent kin and freindis of him that is ſlane, nor zit makis ony mentioun, nor ſchawis quhair he has requirit thame to concur with him in the cauſe, and of thair refuſal; he his alane has na powar to perſew for the ſaid aſſythment, notwithſtanding that he offer cautioun that the remanent kin and freindis ſall hald firm and ſtabill all that is done be him, or is decernit to be payit to him, and mairover offer ane ſufficient letter of ſlanes for all the kin and freindis, befoir he intromet with ony part of the aſſythment to be adjudgit to him. 23 *Feb.* 1541, M'Cartnay *contra N.* 2 *t. c.* 61. C. VI. It is not leaſum to ane kinniſman to perſew for aſſythment, without the reſt.

ANE letter of ſlanes ſould be ſubſcrivit be the principal perſounis of the four branches of him that is ſlane; and zit nevertheles the ſamin is ſufficient, beand ſubſcrivit be the maiſt part of the kin and freindis of him that is ſlane, albeit certane of his four branches conſent not thairto; becauſe in this cais of aſſythment, he quha callis firſt for aſſythment is preferrit for obtening thairof to utheris nearer to him that is ſlane, albeit that thay quha be nearer to the deid cum and perſew efter him, and that in reſpect of thair negligence in perſewing the deid's ſlauchter. 24 *Julij*, 1541, 2 *t. c.* 223. C. VII. Subſcriptioun of a letter of ſlanes.

C. VIII. He quha cravis aſſythment ſould not have the ſamin, except he firſt deliver a letter of ſlanes.

GIF ony perſoun obtenis ane decrete aganis ane uther, decerning him to content and pay ony ſowme of money, or do ony deid for aſſythment of the ſlauchter of ony of his freindis, or for mutilatioun of himſelf, the ſamin ſould have na executioun untill the obtenar thairof deliver, at the leiſt lauchfullie offer, ane ſufficient letter of ſlanes for the ſlauchter to the commitar thairof, or ane ſufficient letter of reconciliatioun for the mutilatioun to the committar of the ſamin: And it is to wit, that ane letter of ſlanes or reconciliatioun is not ſufficient, except the ſamin be ſubſcrivit be the four principal parties and branches of him that is ſlane or mutilat, gif the ſamin can be knawin; utherwayis, the ſubſcriptioun of thré of thame, or of fewer, is ſufficient. 28 *Mart.* 1556, Johne Blair *contra* Johne Montgomerie, 1 *t. c.* 1201.

Anent lawborrowis, *coincident alſwa with the former titil anent ſlauchter.*

C. I. Of lawborrowis to be fund be pure men and pupillis.

PURE men, ſic as taskeris, hyndis, or cottaris, beand chargit to find lawborrowis to ony man, ilk ane of thame may be reſſavit to be lawborrowis for utheris. *Item*, Na pupil nor perſoun beand within the age of xij. zeiris, may be compellit to find lawborrowis. 2 *Decemb.* 1532, Johne Seytoun *contra* Thomas Ballingall, 1 *t. c.* 585.

C. II. Anent lawborrowis to be fund be ane craftiſman.

GIF ony craftiſman within this realme purches our ſoverane Lord's letteris, chargeand our ſoverane Lord's lieges to find lawborrowis to him, his kin, freindis and ſervandis, the perſounis chargit ſould not be compellit to find law-borrowis to all and ſindrie brether of the craft; becauſe in this cais thay ar not all freindis to him that ſeikis the lawborrowis, quhidder he be Deacon of the craft or not. 10 *Aug.* 1567, Thomas Paterſone *contra* Andro Urquhart, 1 *t. c.* 584.

C. III. Of finding of lawborrowis to a communitie or multitude of perſounis.

ANE beand chargit to find lawborrowis to ony communitie or multitude of pepill, of greit nombre, he may raiſe our ſoverane Lord's letteris, and charge all and ſindrie the ſaid perſounis, be opin proclamatioun at the mercat-cros of the ſchirefdome, or burgh, to compeir at ane certane day befoir the Lordis, to heir and ſé the ſaid ſovertie fund: And gif the ſaid day thay compeir not, thay ſall not be heard efterwart to ſeik ony farder lawborrowis perſonallie, for thame awin ſelfis, fra him at quhais inſtance thay war ſummoundit. 7 *Mart.* 1541, William Reid *contra the inhabitantis of the ſchirefdome of* Air, 1 *t. c.* 663.

C. IV. The brekar of lawborrowis ſould be firſt convict criminallie or he be perſewit civillie.

GIF ony man brekis the lawborrowis of peace fund be him to ony of the King's lieges, the King, nor nane of his lieges, may call or perſew him for the ſamin, or to content and pay the pane thairof, untill he be firſt accuſit and convict thairof criminallie befoir the Juſtice or his deputis; becauſe the civil cauſe aucht and ſould be reſpeitit and delayit untill the criminal be firſt decidit. 2 *April.* 1517, *The King* contra Robert Creichtoun, 1 *t. c.* 364.

GIF

GIF ane find ſovertie and lawborrowis under ane certane pane, to ane uther, that he ſall be harmleſs and skaithles of him, and it happin eſterwart out of ane *chaud-melle*, or ſuddentie, that ilk ane of thame ſlay uther, the King and his Theſaurar has juſt actioun aganis the ſovertie for payment of the pane, notwithſtanding that the principal partie quha fand the ſaid lawborrowis is ſlane; and the ſovertie in this cais aucht and ſould be releivit be his air, for quhom he became lawborrowis and ſovertie. 9 *Julij*, 1545, *The King* contra David Balfour, 1 *t. c.* 608. C. V. Of lawborrowis fund be ane to ane uther, quhairof ilk ane thairefter ſlayis utheris.

Item, Gif ony man findis cautioun and ſovertie of laborrowis to ane uther, under ane certane pane, and thairefter brekis the ſamin, the King has juſt actioun and cauſe to perſew him, or his cautioner and ſovertie, for the haill ſowme and pane under the quhilk the lawborrowis wer fund. 5 *Mart.* 1549. *ult. Julij*, 1561, *The Theſaurar* contra Johne Sincler *of* Dryden, 1 *t. c.* 1114

OF ſovertie askit be ony partie of utheris. *Ja.* I. *fol.* 22. *act.* 143. 6 *Mart.* 1429. *Ja.* II. *fol.* 22. *act.* 13. 19 *Jan.* 1449. *Ja.* II. *fol.* 14. *c.* 83. C. VI.

ANENT finding of lawborrowis. *Ja.* IV. *fol.* 91. *act.* 49. 18 *Maij*, 1491. C. VII.

THAT the pane of lawborrowis ſall be equallie dividit betwix the King and the partie offendit. *Ja.* VI. *fol.* 11. *act.* 11. 20 *Octob.* 1579. C. VIII.

Concealing of hurdis and theſauris.

ALL theſauris and hurdis fund in ony place or land within this realme, pertenis to our ſoverane Lord the King, *Lib.* 4. *c.* 7. And gif ony perſoun findis ane hurd, and fraudfullie detenis and conceilis the ſamin, he may be callit and accuſit thairfoir, quhidder ony perſoun compeir to perſew him thairfoir or not, in the ſamin form and ordour of proceſs as is abone ſpecifyit in the crime of leſe-majeſtie. *Lib.* 4. *c.* 4. *Leg. Foreſt. c.* 16. *De jud. c.* 25. C. I. He quha findis a hurd, and conceilis the ſamin, may be perſewit as in leſe-majeſtie.

Anent falſet.

THE crime of falſet is general, and comprehendis divers and ſindrie crimes, ſic as fals chartouris, inſtrumentis, or writtis, of fals mony, of fals meſouris, of fals wechtis, and ſic uther crimes of falſet, of the quhilkis ane man may be accuſit and condemnit. As to the ordour and form of proceſs, quhilk ſould be kept in all and ſindrie thir crimes, the ſamin is ſufficientlie declarit of befoir in the titill of leſe-majeſtie. *Lib.* 4. *c.* 10. *De jud. c.* 154. C. I. Divers kindis of falſet.

IT is to wit, gif ane man be convict of the making of a fals chartour, thair is ane diſtinctioun to be obſervit and kept, *viz.* quhid- C. II. Of fals chartour.

quhidder the ſamin is the King's chartour, or of his over-lord, or of ane privat perſoun. Gif it be the King's chartour, or the chartour of his overlord, he quha is convict of falſet thairanent befoir the Juſtice, ſould be condemnit as a tratour, as for leſe-majeſtie: And gif the ſamin is the chartour of ane privie perſoun, he quha is convict thairof ſall not be ſa ſcharplie and ſtrictlie delt with in judgment, and zit ſould not eſcape without ane great corporal puniſhment, uſit and wont in ſic crimes of falſet; the quhilk is puniſht at the King's will, be tinſal or mutilatioun of ane or ma memberis of his bodie, except the King, of his grace and ſpecial favour, diſpenſe thairwith, and forgive ſic treſpaſſouris thair life or memberis. *Lib.* 4. *c.* 10. *Aſſiſ. Reg. Da. c.* 28. *De jud. c.* 105.

Item, Gif ony man is convict to have maid fals chartour or inſtrument, his hand ſall be cuttit off thairfoir, and alſwa he quha knew the making thairof, or was art and part of the ſamin, ſall be puniſt in the like maner. *Leg. For. c.* 31. *De jud. c.* 74.

C. III. OF fals Notaris and witneſſis, counſellaris and uſeris of falſet. *Ja.* V. *fol.* 129. *act.* 50. 3 *Decemb.* 1540.

C. IV. PANE of fals Notaris, uſeris of falſet. *Mar. Reg. fol.* 155. *act.* 26. 1 *Feb.* 1551. *Mar. Reg. fol.* 163. *act.* 18. 20 *Junij*, 1555. *Ja.* IV. *fol.* 103. *act.* 28. 11 *Mart.* 1503.

C. V. ANENT puniſhment of fals witneſſis. *Mar. Reg. fol.* 165. *act.* 22. 20 *Junij*, 1555.

C. VI. Falſet in indorſatioun of letteris. GIF ony man beis convict to have maid ony feinzeit or fals indorſatioun upon our ſoverane Lord's letteris, or ony uther ordinar Judge within the realme, he may be chargit to enter his perſoun in ward, thairin to remane, upon his awin expenſis, ay and quhill he be fred be the King's Hienes; and alſwa, all his movabill gudis pertenis to his Hienes, as his eſchete, to be diſponit upon be him at his pleaſour. 29 *Mart.* 1531, *The King* contra Duncane Craufurd, 1 *t. c.* 315.

C. VII. Anent falſe wechtis and meſouris. GIF ony man within burgh committis falſet willinglie, in weying and meſouring of ony thing, quhatever it be, as nolt creiſh, or ſwyne ſeam, and is convict thairof, he ſall pay ane unlaw of viij. *s.* thairfoir, *Leg. burg. c.* 71.

Item, He that is convict of falſet in meſouring or weying of ony uther thing, ſall pay ane full amerciament unforgevin, and ſall mak amendis and ſatisfactioun to the partie, *Leg. burg. c.* 51.

Item, It is ſtatute and ordanit, that quhaſoever committis ony falſet in wechtis and meſouris, and is convict thairof within burgh, he ſall be chaſtiſit, (*caſtigabitur*) be the Baillies of the burgh, for his treſpaſs, for the firſt, ſecund and thrid time. *viz.* be ane unlaw of viij. *s.* for ilk time; and beand convict thairof the fourt time, he ſall be in the King's mercie for his life and memberis; becauſe the crime of falſet pertenis to the King's court, and the unlaw within burgh may not exceid the ſowme of viij. *s.* and thairfoir in this cais the ſamin crime may be puniſht at the King's will and pleaſour,

and

and be ane unlaw of x. *lib. Lib. commiſſ. leg. port.* 371. *Leg. burg. c.* 71. *leg. foreſt. c.* 5.

Item, Gif ony perſoun is convict, be inquiſitioun takin be the Baillies, of falſe meſouris and weichtis, his life, landis and tenementis ſall be in the King's will, and his air ſall be diſheriſhit, except the King grant and give his ſpecial diſpenſatioun in the contrare. *De jud. c.* 34.

Item, It is ſtatute and ordanit, that commoun and equal wechtis, that ar leill, be kept in buying and ſelling, and that all men within this realme keip the ſamin, ſwa that thay uſe not a leſs pund and a mair, or ane leſs boll and ane mair; and gif ony be convict to do in the contrare, not uſing leill meſouris and richt weichtis, he ſall pay ane unlaw of viij. ky to the King. *Aſſiſ. Reg. Da. c.* 14.

FALS meſouris. *Ja.* IV. *fol.* 4. c. 47. 26 *Junij*, 1493. C. VIII.

OF fals money. *Ja.* II. *fol.* 31. *act.* 30. *apud finem.* 29 *Jan.* 1499. C. IX.

THAT na deniers of *France*, cortis nor mailzeis, be tane, nor brocht hame. *Ja.* III. *fol.* 55. *act.* 51. 20 *Nov.* 1469. C. X.

ANENT the hame-bringing of fals cunzie, and uſing of the ſamin within the realme, and alſwa anent forgearis and makeris thairof within the ſamin. *Mar. Reg. fol.* 173. *act.* 4. 4 *Junij*, 1563. C. XI.

OF thame that counterfeitis the King's money. *Ja.* V. *fol.* 142. *act.* 106. 14 *Mart.* 1540. C. XII.

FALS cunzie ſould be clippit. *Ja.* VI. *fol.* 17. *act.* 24. 15 *Decemb.* 1567. C. XIII.

Adulterie.

A DULTERER perſevering in adulterie ſould be denuncit rebel, and tynes all his movabill gudis. *Mar. Reg. fol.* 154. *act.* 21. 1 *Feb.* 1551. C. I.

NOTOUR and manifeſt adulterie ſould be puniſht to the deith. *Mar. Reg. fol.* 175. *act.* 9. 4 *Junij*, 1563. *Ja.* VI. *fol.* 5. *act.* 7. 24 *Octob.* 1581. C. II.

COMMITTARIS of inceſt ſould be puniſht to the deith. *Ja.* VI. *fol.* 13. *act.* 15. 15 *Decemb.* 1567. C. III.

ANENT the filthie vice of fornicatioun, and puniſhment of the ſamin. *Ja.* VI. *ibid. act.* 14. C. IV.

Thift.

THAIR ar twa kindis of thift, the ane is publict, the uther privat. Publict and manifeſt thift is, quhen the theif is takin and apprehendit, havand in his poſſeſſioun the thing that is thiftuouſlie ſtollin, ſic as he quha, beand followit be the awner of C. I. Divers kindis of thift.

the gudis, is takin reid hand, that is, in hand havand, or on bak beirand. Privat thift is, quhen ane is ſuſpectit or delatit for thift, be the fame and brute of the countrey, or be way of dittay. *Tractat. Coron. c. 7.*

C. II. Of opin and manifeſt thift.

GIF ony perſoun beand ſuſpect and defamit of thift, in ane province or twa, is fund and apprehendit without ane maſter quha will give ane pledge or borgh for him, he ſall be judgit and demanit as a provin and declarit theif. *Lib. 4. c. 11. Stat. Alex. c. 15.*

Gif ony perſoun has ſtollin ony cattel or gudis, and beand followit with clamour and ſhout of the nichtbouris, is apprehendit in poſſeſſioun thairof, he may incontinent be demanit as ane commoun theif: And ſiclike, gif in the ſicht of the nichtbouris followand him, he leivis the cattel or gudis ſtollin, nevertheles he may be judgit and demanit as ane convict theif. *Lib. 4. c. 11. Aſſiſ. Reg. Da. c. 26. Stat. Alex. c. 16.*

C. III. Of him that is not takin reid hand.

GIF ony perſoun be challengit for thift, in quhais poſſeſſioun nathing is fund nor apprehendit, and the challenger or perſewar has nathing aganis him, he that is challengit ſall mak his purgatioun be the aith or aſſiſe of xxvij. men. *Lib. 4. c. 28.*

C IV. Of ane challengit of thift, havand na borghis.

GIF ony man is challengit of thift, and may find na borgh to underly the law, the King's Juſtice ſall take him, with all that he has, to underly the law; for anent ane theif that may not find ane borgh, it is ſtatute, that gif he was takin reid hand, and has ane perſewar, certanlie he ſall haiſtelie, and but delay, thole the law: And gif thair be nane to follow him, he ſall be kept in preſoun to the nixt court, that men may get knawlege of him, and perſew him, gif thay pleiſe. *Aſſiſ. Reg. Da. c. 2.*

C. V. ANENT ſteillaris of grene wod and frute, *&c. Ja. I. fol. 6. act. 36. 12 Mart. 1424.*

C. VI. STEILLARIS of wod ſould be puniſht in the place quhair the crime is committit. *Ibid. act. 37.*

C. VII. FOR brekkaris of dowcottis, cuningairis, parkis, and ſtankis. *Ja. V. fol. 119. act. 13. 7 Junij, 1535. Ja. III. fol. 59. act. 73, 74. 9 Maij, 1474. Mar. Reg. fol. 167. act. 33. 20 Junij, 1555.*

C. VIII. JUSTICE ſould be done upon theives in all haiſt. *Ja. I. fol. 24. act. 159. 22 Octob. 1436.*

C. IX. OF thift-bute. *Ja. I. Ibid. act. 154.*

C. X. Challenge of ſtollin cattel.

IT is to wit, that gif ony horſe or kow is takin away wrangouſlie fra ony man, and thairefter is fund be the awner thairof in poſſeſſioun of ane uther man, the awner ſould find ane borgh in the handis of ane Officiar, under quhais juriſdictioun he findis his beiſt or cattel, that he ſall lauchfullie perſew the ſamin; and then the cattel ſould be attachit be the Officiar, to be enterit at the ſute of the challenger, and ſould be gevin to borgh to him quha has the ſamin

min in poſſeſſioun, befoir witneſſis, that he ſall exhibite the ſamin beiſt, or cattel, in hyde and hair, at ane certane day and place, to the challenge of him quha clamis the ſamin; and at the ſamin time of the finding of the ſaid borgh, the Officiar ſall cauſe twa leil men, thairto ſworn, to appriſe the ſaid beiſt or cattel; and the price and ſowme to the quhilk it was compriſit ſall be enterit in court, gif the beiſt, befoir the day, happinis to be ſtollin, or ellis to be ſworn and provin be aith to be deid: And gif the beiſt in the mene time happin to die, the defendar aucht to bring to the court ane pruif thairof, *viz.* the top and tail, hyde and hair of the beiſt that was challengit; the quhilk beand done, he ſall enter for him the ſowme to the quhilk he was compriſit, and the perſewar may clame the ſamin like as he micht the beiſt itſelf that was compriſit, gif the ſamin had bene enterit in court: And gif the defendar findis not the beiſt to be deid, bot enteris the ſamin in court, the perſewar may challenge it criminallie, gif he pleiſis, alledging that the ſamin was his lauchful and hame-hald cattel, the quhilk was thiftuouſlie ſtollin fra him ſic ane day, ſic ane zeir, and with-hald-in fra him ſic ane ſpace of time; or it is fré and leaſum to him to challenge the ſamin civillie, alledging the horſe or beiſt to be his awin hame-hald gudis, and wrangouſlie ſtollin fra him, to his damnage and ſkaith, extending to ſic ane ſowme, and offeris him readie to preive the ſamin as law will. In this cais, gif the defendar proponis the titill, or the maner how the beiſt came to him, as be buying, or ony uther lauchful titill quhatſumever, and deſiris ane day to call his warrand thairanent, the ſamin ſould be grantit and gevin to him; at the quhilk day gif the warrand compeiris, the defendar ſould leive the beiſt in the hand of the warrand; and the ſamin beand done, the warrand ſould find ane borgh, that gif it happinis the cattel to be win fra him, he ſall content and pay to the defendar the price quhilk he gave for the ſaid beiſt or cattel. And the purſuer ſould challenge the warrand, and the warrand ſall mak anſwer thairanent, or then tyne the ſamin; and ſwa the matter may be defendit and delayit to the thrid warrand, and na langer; for it behoves him to anſwer *ſimpliciter* thairto: And gif na reſſonabill cauſe be alledgit in the contrare, the perſewar ſall hame-hald, and with him away have, the ſaid beiſt or cattel, havand twa witneſſis with him, makand faith, and preivand the ſamin to be his proper gude, conform to his clame, and that he never gave, ſauld, nor ony maner of way annalzeit the ſaid beiſt or cattel to ony perſoun. *Mod. ten. cur. c.* 13. *Quon. attach. c.* 4.

C. XI. Of gudis ſtollin, and fund agane within burgh.

GIF ony man findis ane horſe, or uther beiſt, ather ſtollin or ſtrayit away fra him, in ony uther man's poſſeſſioun, within ony burgh of this realme, within the boundis of ony Judge ordinar without burgh, he may cauſe the ſamin be areiſtit be ane Officiar of the ſaid burgh, at command of the Proveſt or Baillie of the burgh, or of the uther ordinar Judge, quhill the haver or poſſeſſour of the ſaid horſe find cautioun to anſwer thairfoir as law will: And gif he offeris na cautioun, he that clamis or challengis the horſe, preivand him to pertene to him as his proper gudis and geir, aucht and ſould have the ſamin deliverit unto him; the quhilk gif he dois in maner abone ſpecifyit, he may never be callit for ſpuilzie or wrangous in-

intromiſſioun with the ſaid horſe or beiſt in ony time cuming. 19 *Junij*, 1568, William Guild *contra* Alexander Waddel, 1 *t. c.* 867.

C. XII. Thift done to religious perſounis.

IT is ſtatute, gif ony man ſteill or reive fra ony man of religioun, Clerkis, wedowis, or fra ony uther perſoun, that may not fight the ſingular combat, ſic as perſounis of the age of lx. zeiris or mair, or lamit, mutilat or menziet perſounis, *Lib.* 4. *c.* 4. the compleiner ſall paſs and complein to the Lord of the ground, or his Baillie, quha ſall incontinent cauſe aſſign ane certane reſſonabill day, and tak inquiſitioun be ane aſſiſe of the nichtbouris, of the doing of the ſaid treſpaſs: And gif the committar thairof is fund and convict, or zit is fugitive fra the law, the partie complenand ſall be firſt ſatisfyit of the gudis and geir fund in the ſaid theif's poſſeſſioun, and the reſt of his gudis ſall pertene to the Lord of the ground quhair the ſaid thift is committit: And gif the ſaid thift happinis to be committit within the King's domane, the Schiref ſall tak inquiſitioun in maner foirſaid, and the partie beand ſatisfyit, the reſt of the theif's gudis ſall pertene to the King as eſchete. *Aſſiſ. Reg. Dav. c.* 38. *Stat. Alex. c.* 5.

C. XIII. Thift-bute forbiddin.

IT is defendit and forbiddin, that na man tak meid nor thift-bute fra or for a theif; and quha dois in the contrare, and is convict thairof, ſall pay ane greit unlaw to the burgh, and ſall render to the King the meid or bud quhilk he tuke; and he that gave the ſaid thift-bute or bud, ſall be demanit and juſtifyit as ane provin and convict theif: And gif he that tuke the bud has not of his awin to pay the ſaid unlaw to the King, his perſoun ſall be put in preſoun, thairin to remane at the King's will, reſervand always in this cais to all Lordis thair liberties and fredomes grantit to thame be our ſoverane Lord's predeceſſouris heiranent. *Stat.* 1. *Ro. Bruce, c.* 7. *Stat.* 2. *Ro. Bruce, c.* 9.

Item, It is ſtatute and ordanit be King *David*, that na man ſell ane provin and convict theif for na maner of meid nor freindſhip: And gif ony man, Erle, or uther havand the privilege and fredome of ane Erle, dois in the contrare, he ſall give to the King ane amerciament of ane hundreth ky; and gif ony uther dois ſic a thing, he ſall give to the King xxxiiij. ky, and the theif ſall be outlawit, and baniſht aff the realme: And gif he beis efterwart haiſtelie tane, he ſall be juſtifyit for the ſaid treſpaſs. *Aſſiſ. Reg. Da. c.* 1.

C. XIV. ANENT thift, and reſſet of thift, takand of preſoneris be theives, or bandis, for ranſoumis, and puniſhment of the ſamin. *Ja.* VI. *fol.* 18. *act.* 27. 15 *Decemb.* 1567.

C. XV. Anent theives gevin be the King to ony of his lieges in keiping.

ANE theif or uther man, gevin in pledge for ony man, clan, or ſurname, and gevin be the King's Hienes to ony of his lieges, gif he eſcapis and paſſis away without the King's licence, knawlege, or intelligence of his keipar, he quha had him in keiping may not be puniſht in his life, landis or heritage, or ony part thairof, notwithſtanding that he cum in the King's will thairanent; becauſe the King may not, be declaratour of his will, excede the penaltie of the law dew for that crime, and thairfoir, for ſic a crime, puniſh him be taking of his life, or ony part of his landis or heritage fra him:

him: And gif his Hienes utherwayis dois, the ſamin is of nane avail, and the landis and heritage takin thairfoir aucht and ſould be reſtorit agane be the Lordis of counſal and ſeſſioun. 27 *April.* 1543, *Lord* Zeſter *contra Lord* Fleming, 1 *t. c.* 583.

C. XVI. Of a theif followit be a ſleuth-hound.

It is leaſum to ony man followand the fute of a theif, or beiſt thiftuouſle ſtollin, with ane ſleuth-hound, to enter within ony man's landis, without licence of the Lord of the ground: And gif ony man enteris without licence, and apprehendis the theif with the gudis in his poſſeſſioun, to the valour of xv. *d.* the theif may be, without delay, condemnit thairfoir. *Lib.* 4. *c.* 35.

Item, It is ſtatute, that na man ſtop or let ane ſleuth-hound, or ony perſoun paſſand with him, to follow theives, or to tak and apprehend treſpaſſouris: And ſiclike, that na man troubill ony perſounis followand theives, or uther miſdoaris, without ane hound; and quha dois in the contrare, and is convict thairof befoir the Juſtice, ſall be judgit as ane receiptar of treſpaſſouris, and thole dome thairfoir. *Stat.* 1. *Ro. Bruce, c.* 5. *Stat.* 2. *Ro. Bruce, c.* 7.

C. XVII. How a theif may be takin and ſlane.

Quhasoever apprehendis ane theif committand thift, and thairby doand him harm and skaith, he ſould raiſe the cry with ane horn, gif he ony has, utherwayis with his voce and mouth, and mak the King's Baillie to be certifyit thairof, and ſall mak him preſs, efter his powar, to tak and apprehend the theif; the quhilk gif he dois, he ſall keip him untill the Baronis and the King's Baillies be convenit, and do juſtice upon the theif, efter the law of the land: And gif the theif, perceiving himſelf to be eſpyit, takis the flicht, and runnis away, it is leaſum of the law to ſlay the ſaid theif, and affix his heid upon the nixt gallows. *Lib.* 4. *c.* 33.

Item, Gif ony man findis and apprehendis ane theif, committand thift of his gudis and geir, and ſlayis him in privie, without ony lauchful ſhout, cry or declaratioun of thift maid to the King's Baillie, the parentis and freindis of him that is ſlane, gif ony be, and failzieing thairof, the King's Baillie, may perſew the committar of the ſlauchter, as ane man-ſlayer, aganis the law of the realme. *Quon. attach. c.* 43. *Lib.* 4. *c.* 32.

Item, Gif ony man findis ane theif brekand his houſe, and ſteilling his gudis and geir within ſilence and time of nicht, and ſlayis him, or hurtis or woundis him, ſwa that thairefter he deceis of the ſamin wound, the doer thairof ſall na wayis be callit or accuſit thairfoir: Bot gif he dois the ſamin efter the ſone riſing, in time of daylicht, he ſall die the deith thairfoir as ane man-ſlayer. *De jud. c.* 72.

C. XVIII. Thift may be perſewit ſindrie wayis.

It is leaſum to the perſewar for actioun of thift, to perſew the ſamin in the beginning, civillie or criminallie, as he pleiſis; becauſe he may challenge his gudis and geir as paſt away waith fra him, or utherwayis out of his poſſeſſioun, and preive the ſamin, be ſufficient witneſſis, to be his awin proper gudis, and ſwa ſeik ſimple reſtitutioun thairof, albeit the ſamin in verie deid wer ſtollin fra him; or gif the poſſeſſour of the gudis and geir refuſis to mak reſtitutioun thairof, the awner may challenge the ſaidis gudis and geir as thift, and alledge that the reteinar thairof is ane theif, and that he thiftu-

ouſlie, aganis the King's peace, tuke and caryit away the ſaidis gudis and geir; and may offer him readie to refer the ſamin to the knawlege of ane inqueſt: And gif the defendar alledge the ſamin to be his awin proper gudis and geir, and the aſſiſe, be thair deliverance, teſtifies the ſamin to be of veritie, he ſall be clengit, and paſs quyte, except the perſewar alledge the contrare, and the aſſiſe do teſtifie the ſamin. *Tract. Coron. c.* 3.

C. XIX. Pane of thift.

HE that is accuſit and convict befoir the Juſtice, of commoun and opin thift, may not thairefter be redemit or borrowit with ſilver or uther gudis: And gif ony ſic theif cum in the Schiref-court, the Schiref ſall accuſe him of opin thift, ſuppois he have na partie followand him: And gif that he denyis thift, and all that pertenis to thift, he ſall be put to the knawlege of ane aſſiſe; and gif he be clengit be deliverance of ane aſſiſe, he ſall paſs quite, and the perſewar ſall be in ane unlaw to the King, Erle, Baron, or uther, for his wrangous perſute: Bot gif he be fylit be the aſſiſe, juſtice ſall be done on him but delay, as gif he had bene condemnit befoir the Juſtice. *Mod. ten. cur. c.* 25. *Quon. attach. c.* 25. *Stat. Alex. R. c.* 6.

Item, It is forbidden and defendit, that in ony time heirefter thair be ony dome or maner of judgment, be water or pit, in the quhilk theives had wont to be drownit, nor zit be hot irne, the quhilk in auld time theives wer wont to beir in thair handis; bot fra this furth it is ordanit, that gallowſis be maid, that theives may be hangit thairon. *Stat. Alex. c.* 6. *Aſſiſ. Reg. Dav. c.* 30.

Item, Gif ony theif be apprehendit within burgh, with ſtollin breid, to the valour of ane halfpeny, he ſall be ſcourgit throw the town; and thairefter, with the valour of abone ane halfpeny, and within twa penies, he ſall be mair ſchairplie ſcourgit; and thairefter, for ane pair of ſchoes, to the valour of iiij. penies, he ſall be put in the joggis, and then baniſht the town for ever; and thairefter, for viij. *d.* and a farding, he ſall be put in the joggis, and thairefter ane of his luggis cuttit and baniſht, as ſaid is; and thairefter for xvi. *d.* and ane halfpeny, he ſall be put in the joggis, and his uther lug cuttit, and be baniſhit, as ſaid is: And gif he be takin at ony time thairefter with thift, to the valour of viij. *d.* and ane halfpeny or farding, he may be hangit thairfoir. *Item*, Gif ony theif be takin with thift, of xxxij. *d.* and ane halfpeny, he may be hangit thairfoir. *Leg. burg. c.* 142. *Stat. Will. c.* 16. *De jud. c.* 4.

C. XX. In quhat caiſis a theif ſould not be hangit.

NA theif ſould be hangit for ony thing that is of les price not twa ſcheip, quhairof ilk ane is worth xvi. *d.* *Aſſiſ. Reg. Dav. c.* 1. *Quon. attach. c.* 44.

Item, Na theif ſould be hangit for ane burden-ſek, ſuch as for the thift of ane veill, or of ane ſcheip, or of als mekil meit as he may beir upon his bak in ane ſek; bot he ſall pay to the Lord of the ground quhairin the thift is committit, ane ſcheip or ane kow as ane unlaw: And for committing of the ſaid thift, he may be ſcourgit, and his lug cuttit. *Lib.* 4. *c.* 14. *Aſſiſ. Reg. Dav. c.* 14. *Stat. Alex. c.* 19.

ANENT

ANENT the ſtancheing of thift, reif, and uther enormities. *Ja.* IV. *fol.* 80. *act.* 8. 6 *Octob.* 1488. C. XXI.

THE maſter or mantenar of ane theif ſould deliver him to the partie, *&c. Ja.* V. *fol.* 112. *c.* 2. 12 *Julij*, 1515. C. XXII.

GIF ony theif, or uther treſpaſſour, that is condemnit to be hangit, is hangit, and thairefter fallis out of the widdie, and fra the gallows, he ſould be quite and fré for that crime: Bot he quha ſould have hangit him ſall mak aſſythment to the King thairfoir, alwayis his life, limb, and heritage being ſaif in this cais. *Lib.* 4. *c.* 16. *Quon. attach. c.* 45. *Aſſiſ. Reg. Dav. c.* 2. C. XXIII. Of ane theif that fallis from the gallows.

GIF ony man eommittis thift in the land of ony Baron, or uther fré tenent, he ſould be attachit and led to the preſoun of the Baron or frehalder, within quhais baronie or landis he was tane, and thair ſall be condemnit; and the ſaid Baron or frehalder ſall have the eſchete of the gudis and geir quhilkis pertenit to the ſaid theif, except the Lord of the town, quhair he was tane, be privilegit be infeftment and chartour of fie. *Mal. Mak. c.* 9. C. XXIV. Of gudis pertening to a condemnit theif.

Item, Gif he quha is accuſit of thift is condemnit and convict thairfoir in his Lord's court, his Lord ſall tak the theif's gudis and geir, that may be fund and apprehendit within his awin lordſchip, or ony part thairof; and the ſaid theif's gudis that ar fund in uther lordſchippis ſall remane and pertene to the Lord of the ground quhairin thay ar fund, gif that Lord has powar of ſic courtis, in the quhilk life and limb may be judgit: And gif thay have na courtis, the ſaidis gudis ſall be adjudgit to the King, in eſchete. *Mod. ten. cur. c.* 15.

Item, Gif ony perſoun is convict and condemnit for thift in the ſchiref-court, all his movabill gudis ſall pertene to the Schiref, and his landis and immovabill gudis ſall pertene to the Lord of the fie thairof, ſwa that he may intromet thairwith incontinent, not abidand zeir and day, *Lib.* 2. *c.* 55. *De jud. c.* 150. Bot it is to wit, gif ony man be condemnit for thift, his air, efter he is juſtifyit, ſall recover his heritage, and peciabillie bruik the ſamin, without ony impediment, or gane-ſaying of ony man. *Mod. ten. cur. c.* 22.

GIF ony man, beand challengit of thift, denyis the ſamin, and be reſſoun of his denial is adjudgit to ane certane day and place, to purge and acquite him thairof, and he at that day failzies to mak his purgatioun and acquittance, as accordis of the law, he ſall be done with, and demanit, as ane theif that is convict of thift befoir ane Judge. *Mod. ten. cur. c.* 43. C. XXV. Of the defendar failzie and in his purgatioun.

GIF ony man paſſand in ane deſert place, or in the feildis, happinis to ſé ane uther man, quhom he knawis perfectlie, havand ane ox, or ony uther gudis and geir in his poſſeſſioun, quhairof the awner and proprietar is unknawin to him, and thairefter beand requirit or demandit be ony perſoun, fra quhom the ſaidis gudis wer takin, gif he did ſé the ſamin, he may alledge that he ſaw ſic gudis in ſic ane man's poſſeſſioun, in ſic ane place: And gif he ſweiris the ſamin C. XXVI. Of him quha ſeis a theif be the way.

min, he ſall paſs quite, and the uther man ſall ſeik the theif as he pleiſis: Bot gif he alledge, that he is art and part of the ſaid thift, is haldin to mak his purgatioun thairof, as law will. *Lib.* 4. *c.* 16.

C. XXVII. Of ane theif that brekis the preſoun or ſtokkis.

ITEM, It is ſtatute be King *David*, that gif ony man is put in the ſtokkis, fetteris, or in preſoun, and eſcapis out of the ſamin, and paſſis away, the Lord of that preſoun ſall purge and quite him anent the King, with xxvij. leill and ſufficient men, and thré Thanis, that he wiſt not of the outpaſſing of the theif, nather conſentit thairto. *Aſſiſ. Reg. Da. c.* 1.

C. XXVIII. Of ſtollin gudis fund without warrand.

IT is ſtatute, that gif ony man alledgis that ony maner of gudis is ſtollin thiftuouſlie fra him, and findis the ſamin in ony town, without ony perſoun avowand and warranding the ſamin, he may not tak away the ſaidis gudis with him, bot he ſall leave the ſamin in the keiping of honeſt men in the town quhair the gudis wer apprehendit, and ſall gang to the Schiref, and ſchaw him the maner of the thift, and recovering of the gudis; and then the Schiref, or his Serjand, ſall paſs with him, and call the Proveſt of the town, with twa uther leill men, and gar thame ſweir, that thay wot not, nor knew not of the ſteiling of the ſaid gudis; and then the ſamin gudis ſall be gevin to the awner thairof, he preivand ſufficientlie the ſamin to appertene to him as his proper gudis and geir. *Lib.* 4. *c.* 21. *Aſſiſ. Reg. Da. c.* 4. *Stat. Alex. c.* 20.

C. XXIX. Of him that buyis ſtollin gudis.

GIF ony man buyis gudis and geir, quhilk in veritie ar thiftuouſlie ſtollin, believand that thay ar lauchful merchandice, and knawis nathing of the ſteilling thairof; and quhen the ſamin ar thairefter challengit fra him, he has na warrand thairof; gif he bocht the ſaidis gudis opinlie, in fair or mercat, befoir the Baillies, or honeſt men, quha beiris teſtimonie and record thairof, and payit toll and cuſtume thairfoir, conform to the law of the realme, he ſall be quite and fré fra all danger and pane of thift; bot ſall be compellit to mak reſtitutioun of the ſaidis gudis to the awner thairof, he preivand the ſamin to appertene to him; and in this cais he may not ſeik reſtitutioun fra the awner of that quhilk he payit for the ſaidis gudis: Bot gif he bocht not the ſaid gudis in fair or in mercat, or utherwayis in maner abone expremit, and cannot find his author fra quhom he bocht the ſamin, he is in danger, and may be accuſit of thift thairof. *Tract. Coron. c.* 4.

C. XXX. Pane of receipt of thift.

GIF ony perſoun wittinglie, and of certane ſcience, receiptis thift, or ony gudis or geir thiftuouſlie ſtollin be ony uther, he may be accuſit be the partie havand interes thairto, criminallie or civillie, as the principal theif. 19 *Julij*, 1533, 1 *t. c.* 937.

C. XXXI. Ane receiptar of ane uther man's wife, and gudis, may be accuſit of thift.

GIF ony man's wife willinglie paſſis or fleis away fra hir lauchful husband, havand in hir poſſeſſioun ony of his gudis or geir, be-and movit to do the ſamin for pleaſour of hir bodie, incontinent the receiptar of the gudis may be puniſht thairfoir as ane theif, and the ſaid woman ſall have na richt nor titill to hir dowrie or tierce, efter hir husband's deceis, except he befoir was reconcilit with hir, *Quon. attach. c.* 90. And mairover, gif ony man takis away ane uther

uther man's wife, with ony gudis or geir pertening to hir husband, he may be callit and perſewit for the ſaid geir at the King's inſtance. *Leg. foreſt. c. 77.*

Anent injurie.

C. I. Injurie done to ane within the King's court.

GIF ony perſoun drawis ane ſword or knife, to ſtrike ane uther thairwith in the King's court, he ſall be dung and piercit throw the hand thairfoir: And gif he wound him, or drawis his blude, his hand ſall be cuttit aff thairfoir: And gif he ſlayis ony man, he ſall give to the King xxxix. ky, and ane colpindach, and ſall ſatisfie and aſſyth the freindis of him that is ſlane, efter the law of the realme. *Aſſiſ. Reg. Dav. c. 25.*

C. II. Revenge of injurie.

ITEM, Becauſe greit ſtrife, diſcord, and lurkand envy, was amangis the Lordis and nobilitie of this realme, in the dayis of King *Alexander* our predeceſſour, it is ſtatute, for quenching of all ſic diſcordis, and for muriſhing of ſure and gude peace amangis the the nobilitie and lieges of this realme, that fra thyne furth na perſoun do ony danger, skaith, or moleſtatioun, to ony man, or his men and ſervandis, nor zit procure ony man, publictlie or privatlie, to help ane, and to hurt and hinder ane uther: Bot gif ony perſoun, alledging him hurt and skaithit be ony uther, will complene thairanent, he ſall perſew the ſamin according to the law of the land; and that nane be ſa hardie or bauld, in ony time cuming, to tak, upon his authoritie, amendis or vengeance of ony injurie done to him; and quha dois in the contrare, and is convict thairof, ſall be accuſit as ane brekar of the King's peace, and of his lawis and ſtatutis. *Stat. 2. Ro. Bruce, c. 20.*

Of the King's peace, and breking thairof.

C. I.

THE proclamatioun of the general peace. *Ja. II. fol. 28. act. 13. 19 Jan. 1449.*

C. II.

OF univerſal concord amangis the lieges. *Ja. IV. fol. 84. act. 20. 15 Feb. 1489.*

C. III.

THE alliance and confederatioun of *France* to be confirmit. *Ja. IV. fol. 90. act. 44. 18 Maij, 1491.*

C. IV. Of injurie done to ane askand the King's peace.

GIF within ony girth, or ony uther place, quhairin ony perſoun askis the King's peace, or of the Lord of the land, ony man liftis up his hand, throw malice, to ſtrike ane uther askand peace, as ſaid is, and is convict thairof be the teſtimonie and record of twa leill men, he ſall give thairfoir to the King four ky, and to him quhom he mintit to ſtrike, ane kow: And gif he ſtrikis him with his hand and neif, and drawis not blude, he ſall give thairfoir to the King ſax ky, and to him quhom he ſtruck twa ky: And gif he

drawis bludé of him quhom he ſtruck, he ſall pay thairfoir to the King nine ky, and to him quhom he ſtruck, thré ky: And gif he fellis or ſlayis him with his hand or neif, he ſall pay to the King xxix. ky, and ane colpindach, and ſall aſſyth his freindis conform to the law of the realme. *Aſſiſ. Reg. Da. c.* 23.

C. V. Of breking of the King's peace and protectioun.

GIF ony man complenis or alledgis that ane uther has brokin the King's peace, he ſall have the King's ſummoundis to charge and ſummound the partie complenit upon, to compeir befoir the King, or his Juſtice, thairanent, to anſwer as law will, *Quon. attach. c.* 69. For the crime of breking of the King's peace and protectioun ſould be perſewit befoir the Juſtice, and baith the parties ſould find ſicker borgh to the Coroner, the ane that he ſall perſew, the uther that he ſall defend; and the defendar ſall be ſummoundit in this cais to compeir within ſic a term, and ſpace of time, as of the law ſould be gevin to the defendar in the breve of mortanceſtrie: And the day of compeirance beand cum, the perſewar ſall accuſe the defendar in this maner, *viz.* That quhair the perſewar, his landis, his men, thair poſſeſſiounis, and all thair gudis and geir, beand under ſure protectioun of our ſoverane Lord the King, the defendar on ſic ane day came to ſic ane place, with divers perſounis beand in his companie, bodin in feir of weir, and thair wrangouſlie, and aganis the law, did commit ſic ane crime, in ſic ane maner, and did to him harm or ſkaith, extending to ſic a ſowme, anent the quhilk he is readie, and ofleris him to God and gude aſſiſe to preive: Thairefter it ſall be leaſum to the defendar to propone and uſe all his defenſis lauchful aganis his challenge and accuſatioun; the quhilk gif he failzies to do, the matter ſall paſs to the knawlege of ane inqueſt: And gif it be fund be deliverance of the aſſiſe, that the defendar has brokin the King's protectioun, he ſall be in the King's mercie and will thairfoir, and ſall be decernit alſwa to content and pay to the perſewar the harmis, damnage, and ſkaith ſuſtenit be him throw committing of the ſaid crime, for the quhilk he, or his pledgis fund be him, as ſaid is, may be diſtrenzeit or poindit. *Quon. attach. c.* 31. 69.

C. VI. FOR obſerving of ſicker peace within the realme. *Ja.* I. *fol.* 2. *c.* 2. 26 *Maij*, 1424.

C. VII. ANENT the breking of the King's protectioun. *Ja.* I. *fol.* 23. *act.* 149. 2 *Martij*, 1433.

Anent mure-burn.

C. I. The pane of mure-burn.

IT is ordanit, that within na part of this realme thair ſall be ony mure-burn, or brunt land, bot allanerlie in the moneth of *March*, and not thairefter, induring the time of ſummer or of harveſt, under the pane of xl. *s.* to be upliftit unforgevin, and imployit to the uſe of the Lord of the land: And gif he be negligent heiranent, he ſall be thairfoir indytit in the Juſtice air, and the ſaid pane ſall be takin up and pertene to the King. *Stat. Rob.* III. *c.* 12.

MURE-

MURE-BURN is forbidden. *Ja.* I. *fol.* 5. *act.* 22. 26 *Maij*, 1424. *Ja.* II. *fol.* 45. *act.* 101. 6 *Mart.* 1547. C. II.

THE unlaw of mure-burn. *Vid. Ja.* III. *fol.* 64. *act.* 94. 6 *Aug.* 1477. *Ja.* IV. *fol.* 104. *act.* 106. 11 *Mart.* 1503. *Ja.* V. *fol.* 119. *act.* 11. 7 *Junij*, 1535. *Mar. R. fol.* 167. *act.* 33. 20 *Junij*, 1555. C. III.

Anent ſweareris and perjurie.

ANENT thame that ſweiris abominabill aithis. *Mar. R. fol.* 153. *act.* 16. 1 *Feb.* 1551. C. I.

QUHASOEVER, in beiring of witnes aganis ony perſoun, or in cheiſing of ony man, ſwearis ane aith to do thairintill leillelie and trewlie, and thairefter is convict as men-ſworn, he ſall not thairefter have the comfort and help of Chriſtian men, untill he mak ſatisfactioun to God and man for his perjurie; and mairover ſall pay ane unlaw of viij. ky to the King, and ſall be repellit fra beiring of witnes, and fra making of ony aith in ony time thairefter, and ſall be haldin and repute infamous; for it is the King's office and dewtie to deſtroy and baniſh men-ſworn perſounis furth of the land. *Lib.* 4. *c.* 62. C. II. Pane of perjurie.

PERJURIE puniſht be confiſcatioun of all gudis movabill, warding of thair perſounis zeir and day, and farder during the Quene's will, and be the pane of infamie; that is never to bruke office, honour, dignitie nor benefice. *Mar. Reg. fol.* 154. *act.* 20. 1 *Feb.* 1551. C. III.

Nicht walkeris.

IT is not leaſum to ony perſoun, quha is not of greit authoritie, nor zit of gude brute and fame, to walk and gang in time of nicht, without gude and ſufficient witneſſis, except he do the ſamin for thir cauſis, *viz.* to bring ane Preiſt, Miniſter, or Reidar, to ane ſeik perſoun; or to carie corn to the miln, or fra the miln; or for gudis and geir recentlie ſtollin or takin away; or for his Majeſtie's neceſſar buſineſs: And gif it behovis ony to gang in the nicht, for the cauſis foirſaidis, or ony ane of thame, he ſall declair and ſchaw the cauſe quhairfoir he gangis, to ilk town or village that lyis in his way, gif thair be ony, utherwayis he ſall ſchaw the ſamin to twa or thré leill men of the place quhairfra he gangis, or quhairto he paſſis. *Lib.* 4. *c.* 12. *Stat. Alex. c.* 17. *Leg. burg. c.* 117. *Aſſiſ. Reg. Da. c.* 5. C. I.

Of

Of harborie of ſtrangeris.

C. 1. ITEM, It is not leaſum to ony man to harberie ane ſtranger, ane unknawin or uncouth perſoun, or ony perſoun paſſand throuch the countrie, within his houſe langer nor ane nicht; bot gif he will give ane pledge for him, or bind himſelf as pledge for him, as for ane lauchful man: And gif ony ſic perſoun remanis langer nor ane nicht in ony town or village, he quha ludgit him ſall be accuſit be the Schiref or Juſtice, and ſall underly the law thairfoir, efter the Juſtice's or Schiref's will and pleaſour. *Quon. attach. c.* 47. *Leg. burg. c.* 88.

A maſterles man.

C. 1. GIF ony man is fund within the King's land, havand na proper lord or maſter, he ſall have the ſpace of xv. dayis to get him a maſter: And gif he, within the ſaid time, findis na lord nor maſter, he ſall give ane unlaw of viij. ky to the King's Juſtice: And mairover, the King's Juſtice ſall put his perſoun in preſoun, and keip him to the King's behove, till he get ane Lord and maſter. *Aſſiſ. Reg. Da. c.* 49.

Uſuraris and ockeraris.

C. 1. Uſureris. QUHASUMEVER is ane ockerar, and deceaſſis teſtit or unteſtit, efter his deceis, all his gudis and geir pertenis to the King's Majeſtie, as eſchete; bot na perſoun may be accuſit for ocker induring his lifetime: Bot gif ony man deceis, beand ſuſpect thairof, the King may tak inquiſitioun be ane aſſiſe of xxxij. leill and faithful nichtbouris, beand ſworn thairto, gif the ſaid perſoun uſit the crime of ocker immediatlie befoir the time of his deceis: And gif it be provin be deliverance of the ſaid aſſiſe, that he did the ſamin, all his cattel and movabill gudis ſall be confiſcat to the King's uſe, quhairever thay may be fund; and alſwa his air, for the ſamin, ſall be diſheriſhit, and his heritage and land ſall pertene to the King, gif thay be haldin of him; utherwayis, gif thay be haldin of ony uther over-lord, thay ſall return to him: Bot it is to wit, gif ony perſoun has uſit the crime of ocker, and is opinlie defamit thairfoir in the countrey, nevertheles gif he, befoir his deceis, has deſiſtit and ceiſſit to uſe the ſamin, and has done repentance thairfoir, efter his deceis, his gudis and geir, movabill nor unmovabill, ſall not fall under eſchete be the foirſaid law maid anent ockeraris; becauſe na perſoun's landis, gudis or geir, may be confiſcat be reſſoun of ocker, bot gif the ſaid awner thairof uſit the crime of ocker, and deceiſt in uſing of the ſamin, *Lib.* 2. *c.* 52. *De jud. c.* 152. It is ſtatute that uſerie, or ocker, ſall not have

have courſe aganis ane minor, beand within age, fra the time of the deceis of his predeceſſour, untill his lauchful age; nevertheles the ſaid minor ſall not be maid fré fra the payment of the principal ſowme, bot may be compellit to pay the ſamin without the foirſaid ocker; alwayis he may be compellit to pay the uſurie or ocker thairof auchtand befoir his predeceſſour's deceis. *Stat. Rob.* III. *c.* 24.

C. II. Obligatioun maid to a minor for his ſuſtentatioun.

GIF ony man obliſſis him to pay to ane pupill, at his age of xiiij. zeiris, or at ony uther time, ane certane ſowme of money, as for his portioun natural fallin to him throw deceis of his father, and bindis and obliſſis him to ſuſtene and uphald in the mene time the ſaid pupil honeſtlie in all neceſſaris, upon his brok, and revenue of the ſaid principal ſowme, without diminutioun of ony part thairof, the obligatioun is ſufficient, and na wayis uſurie. 17 *Decemb.* 1562, Thomas Gourlay *contra* William Thomſon, 1 *t. c.* 1247.

C. III. Of ſilver lent for zeirlie rent of victual or ſilver.

GIF ony man borrowis fra ane uther ane certane ſowme of money, and obliſſis him to pay zeirlie ane certane quantitie of ſilver thairfoir, ſaſine following thairupon, or zit ane certane quantitie of victual, ay and quhill he reſtoir and deliver the principal ſowme; he may not be compellit to content and pay the ſaid zeirlie ſowme or quantitie, albeit the obligatioun be regiſtrat, and inſert in the bukis of ane ordinar Judge; becauſe gif he that lent the money ſeik executioun upon the obligatioun, the borroweris thairof may alledge the ſamin to be foundit upon ane obligatioun, or act of mere ocker; the quhilk he preivand ſufficientlie, aucht and ſould be decernit to reſtoir the principal borrowit ſowme allanerlie. 26 *Jan.* 1561, David Dick *contra* Johne Logane, 1 *t. c.* 801.

C. IV. USURIE and ocker quhat it is, and puniſhment thairof. *Ja.* VI. *P.* 14. *c.* 222. 8 *Junij*, 1494.

C. V. USURARIS in the low countries ſould be puniſht be the Conſervator. *Ja.* VI. *P.* 15. *c.* 259. 19 *Dec.* 1597.

Convocatioun of the King's lieges.

C. I. Convocatioun of the King's lieges forbidden.

NA maner of perſoun may mak convocatioun of the King's lieges, but ſpecial command and licence of his Hienes; and alſwa, na tenentis ſould riſe and gadder in feir of weir, with ony perſoun or perſounis, in ony actioun or cauſe, nor zit to anſwer to thame, without it be for gude and reſſonabill cauſis, with the King, or with the Lord of quhom thay hald thair land, under the pane contenit in the act of parliament, as thay will anſwer to the King thairupon. 5 *Feb.* 1497, 1 *t. c.* 74.

C. II. Pane of convocatioun of the King's lieges.

GIF ony perſoun dois gadder the King's lieges, in feir of weir, without licence askit and obtenit fra his Hienes, he, for his offence done to his Majeſtie in breking of the proclamatioun of peace, may be chargit to enter his perſoun in ward, in ſic place, and within ſic time, as his Grace pleaſis, to remane thair, upon his awin ex-

expenſis, quhill he be fred and releivit be his Majeſtie. 29 *Mart.* 1470, *The King's Advocat* contra Alexander Lindſay, 1 *t. c.* 7.

C. III. CONVOCATIOUN within burgh, and without the ſamin. *Ja.* II. *fol.* 43. *act.* 88. 6 *Mart.* 1457. *Mar. R. fol.* 174. *act.* 10. 4 *Junij*, 1563. *Ja.* I. *fol.* 2. *act.* 5. 26 *Maij*, 1424. *Ja.* V. *fol.* 123. *act.* 31. 7 *Junij*, 1535.

C. IV. CONVOCATIOUN of craftiſmen is diſchargit. *Ja.* I. *fol.* 14. *act.* 96. 7 *Julij*, 1426.

C. V. ALL conventiounis, convocatiounis, and aſſemblies, in civil or eccleſiaſtical cauſis, ar forbiddin. *Ja.* VI. *fol.* 3. *act.* 4. 22 *Maij*, 1584.

C. VI. CONVOCATIOUNIS permittit in perſewing theives or forneris. *Ja.* VI. *P.* 14. *c.* 227. 8 *Junij*, 1594.

Of ane that chaiſis and ſeiges ony of the King's lieges within ane houſe.

C. I. GIF ony man chaiſis and ſeiges ony of the King's lieges within ane houſe and place, and ſwa cauſis and compellis him to find borghis to enter his perſoun in ony place appointit be him to that effect, he, for the greit lichtlieing and contemptioun done to his Hienes, may be chargit to enter his perſoun in ward, thair to remane upon his awin expenſis, quhill he be puniſht be the King's Majeſtie for his offence, and be fred and releivit be the King: And as concerning the cautioun or borgh, fund in maner and to the effect foirſaid, the ſamin is of the ſelf null and of nane avail, and thairfoir the finder and granter thairof aucht on na wayis be compellit to enter be reſſoun of the ſamin. 13 *Octob.* 1487, *The King* contra Thomas Cranſtoun, 1 *t. c.* 737.

Of privie impriſonment of the King's lieges.

C. I. GIF ony perſoun takis, apprehendis, or impriſonis ony of the King's fré lieges at his awin hand, without ony authoritie, he may be chargit to enter his perſoun in ward, in ſic place as it pleaſis his Hienes, thair to remane upon his awin expenſis, quhill he be fred be the King's Grace, and that for the greit lichtlieing and contemptioun done to the King's Hienes. 5 *Octob.* 1478, *The King's Advocatis* contra William Gartſchyre, 1 *t. c.* 11.

Of removing of merchis.

C. I. Removing of merchis. GIF the meithis and merchis of ony landis pertening to ony perſounis be caſtin down, or takin away, the Lordis may direct let-

letteris to the Schiref of the ſchire, or ony uther Schiref in that part, charging him to tak cognitioun concerning the away-taking and removing of the ſaidis merchis, and inſetting of the ſamin agane in the places quhairin thay wer markit of befoir; and in this cais the partie ſall not be compellit, bot at his awin pleaſour, to raiſe ane breve of perambulatioun furth of the chancellarie. 17 *Decemb.* 1576. *Ult. Julij*, 1538, James *Lord* Ogilvie *contra Laird of* Logie Wiſhart, 1 *t. c.* 479.

ITEM, Gif ony perſoun be convict to have wilfullie and maliciouſle removit, deſtroyit, alterit, and put away the richt meithis and merchis betwix landis, all his landis and movabill gudis and geir may be eſchete thairfoir, and inbrocht to the King's uſe. 12 *Octob.* 1550, 2 *t. c.* 347. C. II. Pane thairof.

Of ſorneris.

GIF ony man enteris in ane uther man's land, but leave of him that aucht the land, and with violence takis meit or drink fra his men, tenentis, or poſſeſſouris of the land, he ſall give to the ſaid Lord of the land viij. ky. *Aſſiſ. Reg. Da. c.* 10. *Ex lib. Purves.* C. I. Pane of ſorneris.

SORNERIS ſould be arreſtit, till thay ſatisfie the King and partie. *Ja.* I. *fol.* 1. *act.* 7. 26 *Maij*, 1424. C. II.

INQUISITIOUN ſould be maid in all courtis, be all Judges, for away-putting of ſorneris. *Ja.* II. *fol.* 29. *act.* 21. 19 *Jan.* 1449. *& fol.* 37. *act.* 60. 13 *Octob.* 1455. C. III.

THAY ſould be puniſht as theives and reivaris. *Ja.* II. *fol.* 35. *act.* 40. 4 *Aug.* 1455. *Ja.* III. *fol.* 64. *act.* 96. 6 *Aug.* 1477. C. IV.

THE maſter of clannis, theives, reiveris, and ſorneris, ſould find cautioun and pledgis, and in quhat maner. *Ja.* VI. *P.* 11. *c.* 93, 94. 29 *Julij*, 1587. C. V.

SORNERIS and theives dwelland in the In-land ſould return to the land quhair thay wer born. *Ja.* VI. *P.* 11. *c.* 95. C. VI.

THAY, and all vagabondis, feinzeit foolis and Egyptianis, ſould be put in ward. *Ja.* VI. *P.* 12. *c.* 124. 147. 5 *Junij*, 1592. C. VII.

SINDRIE ordinances maid anent thift, reif, oppreſſioun and ſorning. *Ja.* VI. *P.* 14. *c.* 227. 8 *Junij*, 1594. C. VIII.

Labouring of the land.

AT *Scone*, *anno* 1212. *Alexander* be the grace of God King of *Scottis*, with commoun conſent of the Erlis, *&c.* That the C. I. How the ground ſould be manurit.

the labouraris of the ground to landwart ſall till and manure the zeird in the ſamin places and townis in the quhilk thay wer the zeir bygane, and ſall on na wayis pretermit or neglect to do the ſamin, to thair proffit and commoditie, bot fiftene dayis befoir *Candlemas* thay ſall begin with all diligence and labour to teill and ſaw the ground. *Item*, He ſtatutis and ordanis, that feild-men, (*agreſtes*) quha has mair nor four ky, ſall, for thair awin ſuſtentatioun, tak and reſſave landis fra thair maiſteris, and till and ſaw the ſamin; and that all feild men, that has leſs than four ky, albeit thay may not eare and till the ground; nevertheles, that thay and thairis may be ſuſtenit, thay ſall with handis and feit delve and ſaw the zeird als mekil as thay may; and gif thay have ony oxin, thay ſall ſell the ſamin to thame quha labouris the land: And gif ony perſoun dwelland under ane Erle dois not as ſaid is, the Erle thair maſter ſall pay to the King ane amendis or unlaw of viij. ky. And gif ony of the King's tenentis neglectis to do the ſamin, he ſall give to the King viij. ky: And gif he be ane ſervand, the Lord ſall tak of him ane kow and ane ſcheip as ane unlaw, and ſall compell him to do that aganis his will quhilk he wald not willinglie; for in this cais it ſould be diligentlie eſchewit, that it be not verifyit that is ſaid in ane commoun proverb, *viz. He that for ſwearnes and cauld wald not work in winter, ſall thairfoir beg in the ſommer time, and zit nathing ſall be gevin unto him*; bot rather the ſentence of the Apoſtle ſould be obſervit and followit, *viz. that thay ſould travel and work with thair handis that quhilk is gude, and thairfoir may have quhairof to give to thame that miſteris. Stat. Alex. c.* 1.

C. II. Pane of having guild in corn-land.

GIF the King's or Baron's tenent or mailler put guild in the King's or Baron's land, and will not deſtroy the ſamin, and clenge the land, he may be puniſht thairfoir, as ane ſeducear quha guydis and convoyis ane hoiſt or armie of enemies within the King's or Baron's land. *Leg. foreſt. c.* 28. *De jud. c.* 6.

Item, Gif thy native man has guild in thy land, for ilk ſtok or plant thairof, that is to ſay, that is fund thairin, he ſall give to thé ane muttoun as ane unlaw, and nevertheles he ſall be compellit to purge and clenge the land of the ſaid guild. *Leg. foreſt. c.* 29. *De jud. c.* 7.

C. III. THAT everie man that has not of his awin, ſall labour for his liveing. *Ja.* I. *fol.* 11. *act.* 76. 11 *Mart.* 1425.

C. IV. OF ſawing and labouring of the ground. *Ja.* I. *fol.* 13. *act.* 91. 30 *Sept.* 1426. *Ja.* II. *fol.* 44. *act.* 92. 6 *Mart.* 1457.

C. V. *ITEM*, Gif ony man ſawis cornis upon ane uther man's ground, without his licence or conſent, it is leaſum to the awner or over-lord of the ground to ſaw the ſamin over agane, ſcheir the cornis, leid and tak thame away, and diſpone thairupon at his pleaſour. 24 *Mart.* 1546, 1 *t. c.* 1159.

Item, Landis lyand togidder in rin-rig, and ſwa pertenand and occupyit be divers and ſindrie perſounis, everie ane of thame may be compellit, at the inſtance of ane uther, to concur in keiping of gude nichtbourheid ane with the uther, in tilling, labouring, ſaw-

ing,

ing, ſcheiring, paſtouring, and dykeing, and in all uther thingis pertening to gude and thriftie nichtbourheid: And gif ony damnage and skaith happinis to ony perſoun throw the negligence and default of ony of the occupyaris, beand requirit to concur and aſſiſt, as ſaid is, and refuſand or delayand to do the ſamin, the remanent occupyaris, his colligues, ſall not be bund and obliſt thairfoir. 20 *Feb.* 1552, 1 *t. c.* 1157.

Of witchcraft.

C. I. WITCHCRAFTIS, ſorcerie, and necromancie forbidden. *Mar. Reg. fol.* 174. *act.* 8. 4 *Junij*, 1563.

Of leaſing makeris, and raiſeris of diſcord betwixt the King and his pepill.

C. II. ITEM, It is ſtatute and ordanit, that na perſoun be ane conſpiratour or inventer of narratiounis, rumouris, taillis, or ſuſpitiounis, quhairthrow diſcord may ariſe betwix the King and his pepill: And gif ony is fund and attaintit heirof, he ſall be takin incontinent, and put in preſoun, and thair ſickerlie be kept untill the King declair his will and pleaſour upon him. *Stat.* 2. *Ro. Bruce, c.* 21.

C. III. LEASING-MAKERIS tynes life and gudis. *Ja.* I. *fol.* 7. *act.* 47. 12 *Mart.* 1524. *Ja.* V. *fol.* 129. *act.* 53. 3 *Decemb.* 1540. *Mar. Reg. fol.* 168. *act.* 39. 20 *Junij*, 1555. *Ja.* VI. *fol.* 6. *act.* 8. 22 *Maij*, 1584. *Ja.* VI. *P.* 10. *c.* 10. *Ja.* VI. *P.* 14. *c.* 205.

C. IV. Famous libellis, and pane thairof. IT is ſtatute and ordanit, that na maner of man mak, write, or imprent ony billis, writingis, balladis, famous or ſclanderous to ony perſoun, ſpiritual or temporal, under the pane of death, and confiſcatioun of all his movabill gudis. 20 *Junij*, 1543, 1 *t. c.* 586.

C. V. FAMOUS libellis and bukis ſould not be brocht hame, under the pane of baniſhment and confiſcatioun of all movabill gudis. *Ja.* VI. *fol.* 5. *act.* 8. 24 *Octob.* 1581.

Anent arreiſtment.

C. I. Arreiſtment may not be maid in time of a fair. ARRESTMENT maid within time of ane fré fair, proclamit opinlie, or uſit commounlie for the ſpace of certane dayis, is of nane avail, be way of exceptioun: And gif ony man be perſewit for breking thairof, he ſould on na wayis be puniſht thairfoir, he preivand the ſamin to have bene maid within the time foirſaid. 24 *Novemb.* 1552, 1 *t. c.* 1245.

C. II. In quhat cais cornis may CORNIS growand upon ony man's landis may on na wayis be arreiſtit

not be arreiſtit. reiſtit on the ground, for ony annuelrent auchtand furth of the ſamin landis be ony man. 9 *Mart.* 1502, Robert Francis *N. contra Erle of* Montgomerie, 1 *t. c.* 139.

C. III. Arreiſtment ſould be intimat to the partie. GIF ony perſoun cauſis ony arreiſtmentis to be maid upon ony man's cornis, gudis or geir, he aucht and ſould denunce and intimat the ſamin to the awner thairof; utherwayis, gif na intimatioun be maid, it is leaſum to the awner to diſpone upon the ſaidis cornis, gudis and geir, at his pleaſour, notwithſtanding of ony arreiſtment maid thairupon. 9 *Jan.* 1566, William Seytoun *contra* William Forbes, 2 *t. c.* 321.

C. IV. Intimatioun of arreiſtment. *ITEM*, Gif ony Officiar or Serjand, commandit and ſend be ony perſoun or Judge havand powar thairto, arreiſtis cornis pertening to ony man, for ony cauſe, and efter he has lauchfullie arreiſtit the ſamin, ſcheiris, winnis, leidis, and ſtakkis the ſamin cornis upon the ground quhair thay grew, he doand the ſamin is underſtuid to mak lauchful intimatioun thairby to the awner of the ſaidis cornis, that he may not thairefter alledge or pretend juſtlie ony ignorance of the making of the ſaid arreiſtment. 28 *Novemb.* 1533, *The King* contra Robert Lumiſden *of* Mather, 1 *t. c.* 437.

C. V. PROBATIOUN of arreiſtmentis. *Ja.* III. *fol.* 58. *act.* 65. 9 *Maij*, 1474.

C. VI. Louſing of arreiſtment. ARREISTMENT beand maid upon cornis growand upon ony landis, or upon peittis, turvis, divettis, or ony fewell caſtin in ony ground, the ſamin on na wayis ſall be louſit, nor the landis lettin to borgh to ony perſoun, gif it be the firſt zeir of the riving furth, tilling and ſawing of the ſaid cornis, or caſting and winning of the ſaid faill, divettis and fewall; bot the ſamin ſall remane arreiſtit upon the ground quhill the ground richt be decidit, and cognitioun be takin quha has juſt richt thairto: Bot gif it be not the firſt time, nor the firſt zeir's crop, the ſamin arreiſtment aucht and ſould be louſit, he at quhais inſtance it is louſit findand cautioun to anſwer thairanent as law will. 21 *Jan.* 1575, *Laird of* Corſtorphine *contra the Laird of* Lethingtoun. 26 *Jan.* 1533. 1 *t. c.* 480. 27 *Junij*, 1533, *The King, and Laird of* Philorth, *contra the Schiref of* Banf, 1 *t. c.* 430.

C. VII. Cautioun finding in arreiſtment. ARREISTMENT beand maid upon gudis or cornis, and the awner thairof offeris to find cautioun to anſwer as law will, it is ſufficient that the cautioun be fund, that ather the ſamin ſelf gudis, or ellis the availl thairof, ſall be furthcumand to ony partie havand interes. 4 *Junij*, 1533, 1 *t. c.* 676.

C. VIII. Of him that ſufferis not his cornis to be ſtakkit on the ground. GIF ony man's cornis be arreiſtit at the inſtance of ane uther, and the maker thairof refuſis to louſe the ſaid arreiſtment, he beand requirit thairto be the awner of the ſaidis cornis, and cautioun beand offerit to him be the awner, to do thairfoir that he aucht and ſould do be the law: And zit gif the maker of the arreiſtment, beand deſyrit be the awner, refuſis to give licence to ſtak the cornis upon the ground, to be furthcumand as law will, the awner of the ſaidis

ſaidis cornis may juſtlie intromet thairwith, and diſpone thairupon at his pleaſour, and on na wayis thairthrow may be callit and convict for breking of arreiſtment. 6 *Julij*, 1518, *Abbat of* Paiſlay *contra* Adam Wallace, 1 *t. c.* 388.

C. IX. Breking of arreiſtment.

ARREISTMENT maid upon ony gudis or geir, be authoritie of ane Judge havand powar to mak the ſamin, is underſtuid to be brokin, gif the awner thairof intromet with the ſamin without licence of the partie, or ſatisfactioun not beand maid to him at quhais inſtance the ſaidis gudis and geir wer arreiſtit, or zit without licence or command of the Judge quha cauſit the ſaid arreiſtment to be maid, or than of ſum uther Judge beand ſuperiour to him, or havand ane greiter powar. 15 *Novemb.* 1563, *The Theſaurare* contra Johne Kyle, 1 *t. c.* 1329.

C. X. Pane of the breking of arreiſtment.

GIF ony Lord's tenent brek arreiſtment maid lauchfullie be his Lord, he may be callit thairfoir in his Lord's court, befoir him, or his Baillie; and beand convict thairfoir, he foirfaultis and tynes his takkis quhilk he has of his ſaid Lord; the quhilk, with all his movabill gudis, beand within the ſaid Lord's juriſdictioun, pertenis to the ſaid Lord as eſchete, and may be leaſumlie intromettit with and up-taken be him, or ony in his name. 29 *Maij*, 1565, Richard Scot *contra Lord* Somerville, 1 *t. c.* 1328.

Item, Arreiſtment be the King's letteris beand lauchfullie maid upon ony debaitabill cornis, gudis or geir, gif ony perſoun or perſounis brekkis the ſamin, and beis convict thairof, all thair movabill gudis may be confiſcat, applyit and inbrocht to the King's uſe: And alſwa, thay may be chargit to enter thair perſounis in ward at the King's will, thair to remane for zeir and day, and farder, at the King's will, upon thair awin expenſis, for thair contemptioun done to his Hienes in breking of the ſaid arreiſtment. 22 *Feb.* 1524, *The King* contra William Dingwall, 1 *t. c.* 174.

Anent deforcement.

C. I. A Lady tiercear, or conjunct-fear, may be Judge in deforcement.

GIF ony man deforcis the Officiar of ane Lady tiercear, conjunct-fear, or liferenter, he may be callit and convict thairfoir in hir court befoir hir Baillie. 8 *Mart.* 1534, 1 *t. c.* 1004.

C. II. All ordinar Judges may be Judges in deforcement of thair Officiar.

PROVEST and Baillies of ony burgh, or ony Judge ordinar within this realme, ar Judges competent to cognoſce upon ony deforcement committit aganis thair Officiar, in executioun of his office: And gif ony beis thairin fund culpabill, to convict him thairof, and to give decrete of deforcement aganis him, and to ſend and cauſe the ſamin be preſentit to the King's Advocat, that he may purches our ſoverane Lord's letteris, and cauſe the ſaid perſoun be puniſht according to his treſpaſs. 16 *Decemb.* 1532, *Burgh of* Perth contra Johne Pypar, 1 *t. c.* 548. Gif ony man, havand landis, or ony uther commoditie in tak and aſſedatioun of ony Baron, Lady tiercear, conjunct-fear, or ony uther perſoun, deforcis his ſaid maſter's Officiar, he may be callit and convict thairfoir befoir him or his

his Baillie, in his awin court, and decernit to have tint and foirfaultit his takkis, for all the zeiris and termis to rin, and the ſamin to return and pertene to the ſaid maſter: And gif he refuſis to obey the decrete, the Lordis of ſeſſioun ſould direct thair letteris conform thairto, for fulfilling of the ſamin. 8 *Mart.* 1534, Jonet Kennedie *Ladie* Bothwell *contra* Robert Dalzell, 1 *t.* *c.* 470.

C. III. Probatioun of deforcement.

DEFORCEMENT ſould be provin be the Officiar that is deforcit, and, at the leiſt, be twa witneſſis with him; for it is not ſufficient to preive the ſamin be the aith of the Officiar, and ane witnes allanerlie. 17 *Julij*, 1540, Andro Ord *contra Schiref of* Banf, 1 *t.* *c.* 1042.

C. IV. Pane of deforcement of ane Officiar.

GIF ony of our ſoverane Lord's lieges, of quhatſumever rank, ſtait or conditioun, will not ſuffer thameſelfis to be attachit or ſummoundit, to do that quhilk is conform to law and juſtice, or wrangouſlie ſtoppis the executioun of ony ſentence or decrete, or will not ſuffer ony Officiar peciabillie to poind and diſtreinzie ony gudis or geir, conform to the law and conſuetude of this realme, he may be thairfoir puniſht as ane rebel, efter the quantitie of his treſpaſs. *Leg. foreſt.* *c.* 81.

Item, Gif ony perſoun, be violent force of armis, takis away the poind or diſtreſs fra the Officiar, in this cais the Officiar, with the King's lauchful lieges, ſall tak and apprehend the ſaid deforcear, and reſſave ane pledge fra him, to compeir befoir the Judge, and anſwer thairanent as law will: And gif he may not be takin, or zit fleis away, the Officiar ſall raiſe the hoy and cry upon him, at the King's caſtel within the ſchirefdome, and ſall complene that he is, aganis the law of the realme, deforcit, or bereft of his poind or diſtreſs, in the executioun of his office, to the greit deſpite and contemptioun of the King and his Juſtice: And gif the deforcear deny the ſamin, the Schiref ſall let him to borgh to enter his bodie in judgment at ane certane day, and ſall attach him in his bodie, and cauſe him be ſurelie keipt untill he find ſufficient pledges to anſwer to the King and his Officiaris as law will: And the day of compeirance beand cum, and he enterand in judgment, the Schiref ſall accuſe him ſcharplie of the deforcement done to the Officiar in executioun of his Office: And gif he happinis to be convict be deliverance of ane gude and leill aſſiſe, his bodie ſall be put in preſoun, and he ſall be in the King's will concerning his life and memberis, and all his movabill gudis ſall be in like maner in the King's will; bot he ſall not tine or foirfault his landis, tenementis, or immovabill gudis. *Quon. attach.* *c.* 82.

Item, Gif ony tenent deforcis his Lord or maſter's Officiar, and beis convict thairfoir befoir him, or his Baillie, he foirfaultis and tynis his takkis, and all his movabill gudis quhilk ar within his Lord's juriſdictioun; the quhilk privilege and pane pertenis to all fré tenentis and fewaris, baith of temporal and ſpiritual men. 16 *Decemb.* 1541, 2 *t.* *c.* 41.

C. V. Of divers perſounis convict

GIF divers and ſindrie perſounis commit ane deforcement, thay all may be callit and convict thairfoir; *quia unius pœna alios non liberat.*

berat. 26 *Novemb.* 1528, *The King's Advocat* contra Johne Clark *and utheris*, 1 *t. c.* 345. of deforcement.

ANE decrete or rolment of court, quhairin ane is convict to have deforcit the King's Officiar in executioun of his office, is of nane avail, and may be reducit, gif it contenis or ſpecifies na relevant cauſe of the deforcement, nor in quhat maner the ſamin was maid. 8 *Feb.* 1537, 1 *t. c.* 495. C. VI. Reductioun of deforcement.

GIF ony man callit and perſewit for deforcement of ane Officiar, in the executioun of his office, alledgis and preivis that the ſamin Officiar was, befoir the time of the executioun and poinding, diſchargit of his office, ather *ſimpliciter* be the Judge ordinar, or of his office in that part be him in quhais name he poindit, he ſould be *ſimpliciter* aſſoilzeit fra the pane of deforcement. *Ult. Julij*, 1562, *The Quene's Advocat* contra Henrie Wardlaw *of* Torrie, 1 *t. c.* 1273. C. VII. Exceptioun in actioun of deforcement.

Of hameſucken.

IT is ſtatute, that gif ony man will accuſe ane uther of Hameſucken, it is neceſſar that he alledge that he aſſailzeit him in his awin proper houſe, quhair he has his winning, riſing, and lying day and nicht; for na man may challenge ane uther of hameſucken, bot for aſſailzieing him at his awin proper houſe and dwelling-place. *Item*, This crime may be followit, perſewit, and puniſht as the crime of raviſhing of women. *Quon. attach. c.* 50. *Stat. Will. c.* 10. C. I.

Item, Gif he quha is aſſailzeit delayis attour the ſpace of ane nicht to mak perſute in maner abone reherſit of raviſhing of women, he ſall, for his delay, be in the King's amerciament, and ſall not be heard to perſew efterwart; and alſwa the committar of the crime ſall paſs quite and fré for that time. *Stat. Will. c.* 9.

Games or paſtimes.

ARCHERIE is commandit to be uſit. *Ja.* I. *fol.* 4. *act.* 20. 26 *Maij*, 1424. *Ja.* II. *fol.* 40. *act.* 71. 6 *Mart.* 1457. C. I. Archerie.

FUTE-BALL and golf forbidden, *Ja.* I. *fol.* 4. *act.* 19. 26 *Maij*, 1424; to be puniſht be the Baron's unlaw, *Ja.* II. *fol.* 40. *act.* 71. 6 *Martij*, 1457; becauſe thay ar ſportis not proffitabill for the commoun gude of the realme, and defence thairof. *Ja.* IV. *fol.* 92. *act.* 53. 18 *Maij*, 1491. C. II. Fute-ball and golf.

THE playis of *Abbot of unreaſoun*, *Robin Hude*, *Lytill Johne*, and *Quenis of Maij*, diſchargit, and the chuſeris and acceptaris of ſic offices ſould be puniſht. *Mar. R. fol.* 168. *act.* 40. 20 *Junij*, 1555. C. III. Playis.

Hunting and halking.

C. I. ITEM, It is leaſum and permittit to all men to chaiſs hairis, foxis, and all uther wild beiſtis, beand without forreſtis, warrenis, parkis, or wardis, *Quon. attach. c.* 29. *Mod. ten. cur. c.* 27.

Item, It is defendit and forbidden, that ony man ſlay hairis in time of ſnow, under the pane of vi. *s.* viij. *d.* to be up-takin unforgevin be the Lord of the ground, to his awin proper uſe, and in his default, be the Schiref, to the King's uſe. *Stat. Rob.* III. *c.* 11.

C. II. HUNDIS or doggis pertening to ony man ſould not be takin be ane uther. *Ja.* III. *fol.* 59. *act.* 73. 9 *Maij*, 1474. *Mar. Reg. fol.* 168. *act.* 36. 20 *Junij*, 1555.

C. III. HUNTERIS ſould not ride nor gang in thair nichtbour's corn. *Mar. Reg. fol.* 168. *act.* 35. 20 *Junij*, 1555.

C. IV. THAY ſould not hunt within ſax miles to the King's woddis, parkis and palaces. *Ja.* VI. *P.* 14. *c.* 210.

C. V. ANENT the ſlayeris of hartis, hairis, and deſtroyeris of cuningis. *Ja.* II. *fol.* 45. *act.* 99. 6 *Mart.* 1457. *Ja.* V. *fol.* 120. *act.* 15. 7 *Junij*, 1535. Na time hairis ſould be ſlane without licence, under the pane of thift. *Ja.* VI. *P.* 11. *c.* 59. *&. P.* 15. *c.* 266.

C. VI. WOLF and wolf whelpis ſould be huntit and ſlane. *Ja.* I. *fol.* 18. *act.* 115. 1 *Mart.* 1427. *Ja.* II. *fol.* 44. *act.* 98. 6 *Mart.* 1457.

C. VII. WYLD foulis, ſic as pertrikis, pluveris, black cockis, gray hennis, mure cockis, ſould not be takin fra the begining of *Lentren* until *Auguſt*. *Ja.* I. *fol.* 19. *act.* 122. 1 *Mart.* 1427.

C. VIII. WYLD foulis of reif ſould be deſtroyit. *Ja.* I. *fol.* 44. *act.* 94. 6 *Mart.* 1457. *Ja.* I. *fol.* 5. *act.* 21. 26 *Maij*, 1424.

C. IX. OF making of hedges. *Ibid.*

C. X. NA man ſould ſchute at deir, and wyld foulis, under the pane of death, and tinſel of thair movabill gudis. *Mar. R. fol.* 148. *act.* 8. 29 *Maij*, 1551. *& fol.* 165. *act.* 25. 20 *Junij*, 1555. *Ja.* VI. *fol.* 14. *act.* 16. 15 *Decemb.* 1567. *&. P.* 14. *c.* 210. *P.* 15. *c.* 266.

C. XI. NA man ſould ſlay dais, rais, deir, in time of ſtorm, or ſnaw, nor thair kiddis, quhill thay be ane zeir auld, nor hunt nor ſchute at thame in clofis or parkis, *&c. Ja.* III. *fol.* 59. *act.* 74. 9 *Maij*, 1474.

C. XII. STALKERIS that ſlayis hart, hynd, dae, rae, and thair mantenaris

naris, ſould be inquirit be the Juſtice-Clerk; and the ſtalker being convict, payis to the King 40 *s.* and his mantenar payis 10 *lib.*

ITEM, Slayeris of dais, rais, and deir, in time of ſtorm, may be accuſit of thift. *Ja.* I. *fol.* 7. *act.* 39. 12 *Mart.* 1424. *Ja.* III. *fol.* 59. *act.* 174. 9 *Maij*, 1474. *Ja.* V. *fol.* 119. *act.* 14. 7 *Junij*, 1535. *Ja.* VI. *P.* 11. *c.* 59. C. XIII.

Fiſching.

FISCHING and making of herring in the weſt ſea. *Ja.* III. *fol.* 78. *act.* 133. 1 *Octob.* 1487. ratifyit be *Ja.* IV. *fol.* 100. *act.* 84. 26 *Junij*, 1493. C. I.

OF the bind of ſalmond. *Ja.* IV. *Ibid.* C. II.

HERRING and quhyt ſould be brocht to fré portis within the realme. *Ja.* VI. *P.* 4. *c.* 6. *ult. April.* 1573. C. III.

ITEM, It is ſtatute and ordanit, that na maner of perſoun tak fra ony fiſcher, ather upon ſalt or freſh wateris, ony maner of fiſch, bot that for the quhilk thay pay, and reſſonablie ſatisfyis the ſaidis fiſcheris: And quhen ony perſoun maſterfullie committis ony ſic treſpaſs, the fiſcheris ſall raiſe the cry, and all nichtbouris natreſt about thame ſall riſe and follow the ſaid treſpaſſour and reivar, quhill he be takin and brocht to the Schiref, and juſtifyit be him as ane manifeſt reivar, but favour or delay; and that the takeris of the ſaid treſpaſſour ſall have ane mark, uſual money of this realme, fra him that has the profit of the ſaid fiſhing: And gif the ſaid treſpaſſour cannot be takin and apprehendit, thay that followit or perſewit him ſall cum or ſend to the Schiref, and ſchaw him the name of the reivar or treſpaſſour; and the Schiref ſall write to the Lord or Baillie of the ground quhair the ſaid treſpaſſour is and remanis for the time, chargeand him in the King's name to tak the ſaid treſpaſſouris, ane or ma, and ſend thame to him to be juſtifyit; and quhilk of the ſaidis Lordis or Baillies failzies thairintill, that the Schiref mak him to be arreiſtit to the nixt Schiref-court, to be accuſit thairfoir: And gif he beis convict thairof befoir him be ane aſſiſe, that he be adjudgit in ane unlaw of xx. *lib.* to be raiſit to the King's uſe; and that the ſamin be rollit in the Schiref-court buik; and that he ſall anſwer and be reſponſal in the chekkar thairfoir. 5 *Feb.* 1497, 1 *t. c.* 75. C. IV. Anent thame that reivis fiſch fra fiſcheris.

IT is ſtatute, that all that has fiſh cruives, (*croas, aut piſcarias*) or ſtankis, or milnis, (*molendina*) on wateris quhair the ſea flowis and ebbis, and quhair zoung ſalmond, ſmoltis, or the fry of ony uther kind of fiſh of the ſea, or of the freſh water, aſcendis or deſcendis; that all ſic cruives and maskis, (*machinæ piſcariæ*) and heckis thairof, ſall have at the leiſt twa inche in lenth, and thré inche in breidth, ſwa that the ſmolt or fry may frelie ſwim up and down the water, without ony impediment: And quha ſwa beis con- C. V. Of cruives, and the maner how the ſamin ſould be maid.

convict in the contrare, ſall be impriſonit for the ſpace of xl. dayis, and alſwa pay ane unlaw to the King. *Stat.* 1. *Ro. Bruce, c.* 8. *Stat.* 2. *Ro. Bruce, c.* 12.

C. VI. The water ſtreme, and quantitie thairof.

IT is ſtatute and ordanit be King *Alexander*, at *Perth*, on *Thurſday*, beſoir the feiſt of Sanct *Margaret*, with conſent of the Erlis, Baronis and Judges of *Scotland*, that the midſt of the water ſall be fré, in ſa mekill that ane ſwine of thré zeir auld and weill fed, is of lenth, and may turn him within it, in ſic ane maner, that nather his grunzie nor his tail tuich ony of the ſides of the cruives that ar biggit on ilk ſide of the water: And it is ſtatute, that all wateris be fré, and that within thame na man ſall ſlay fiſch fra the *Saturday* efter the evin ſong, or evning prayeris, untill *Monday* efter the ſone ryſing. *Stat. Alex. c.* 27. *Leg. burg. c.* 113.

C. VII. CRUIVES and zairis ar forbidden in freſh wateris. *Ja.* I. *fol.* 4. *act.* 12. 26 *Maij*, 1424. *Ja.* III. *fol.* 63. *act.* 92. 6 *Aug.* 1477. *Ja.* IV. *fol.* 83. *act.* 15. 6 *Octob.* 1488. *Ja.* V. *fol.* 120. *act.* 18. 7 *Junij*, 1535. *Mar. Reg. fol.* 172. *act.* 2. 4 *Junij*, 1563. *Ja.* VI. *fol.* 15. *act.* 23. 20 *Octob.* 1579.

C. VIII. ANENT cruives and zairis of the mid-ſtreme; the *Saturday*'s ſlop; creillis and nettis; reid fiſh. *Ja.* IV. *fol.* 87. *act.* 32. 15 *Feb.* 1489.

C. IX. Salmond ſould not be takin in forbidden time.

IN time of King *Alexander*, na maner of water was forbidden and defendit for fiſching of ſalmond, bot wateris rinnand to the ſea. *Quon. attach. c.* 29. *Mod. ten. cur. c.* 27.

Item, All wateris in the quhilk ſalmond uſis to be takin, ar defendit and forbiddin fra taking of ſalmond in thame, fra the day of the nativitie of our Lord, or fra *Candlemas* untill *Martinmas*: And ſiclike, it is forbidden, that ony ſmoltis be takin or ſlane with nettis, or with uther ingines, into miln-damnis, fra the xv. day of *April*, untill Mid-ſummer; and quha dois in the contrare, he ſall be puniſht for the firſt time be burning of his nettis or uther ingines, and for the ſecund time he ſall be impriſonit be the ſpace of ane half zeir, and for the thrid time be the ſpace of ane haill zeir, and for the feird time be the ſpace of ane zeir and ane half, and ſwa furth, according to the multiplicatioun of the treſpaſs, the pane ſall proportionally increſce, and be augmentit. *Leg. foreſt. c.* 85. *Item, Vide ſtat.* 1. *Ro. Bruce, c.* 8. *Stat.* 2. *Ro. Bruce, c.* 12. *Stat. Rob.* III. *c.* 8.

C. X. OF ſlaying of ſalmond in forbidden time. *Ja.* I. *fol.* 4. *act.* 12. 26 *Maij*, 1424. *&* *fol.* 6. *act.* 38. 12 *Mart.* 1424. Except in *Solway* and *Twede*. *Ja.* I. *fol.* 22. *act.* 145. 6 *Mart.* 1429. *Ja.* II. *fol.* 28. *act.* 9. 20 *Jan.* 1449. *&* *fol.* 44. *act.* 96. 6 *Mart.* 1457.

C. XI. THAT nane ſet creillis in wateris. *Ja.* II. *Ibid. act.* 97.

C. XII. OF fiſh, ſalmond, grilſes, trouttis, and nettis in wateris. *Ja.* III. *fol.* 54. *act.* 45. 20 *Novemb.* 1469.

GIF

C. XIII. Anent fiſching foiranent the mouthis of wateris flowing in the ſea.

GIF ony man be heritabillie infeft, and be virtue thairof in poſſeſſioun of fiſching of ſalmond, within ony freſch water, havand ane entres in the ſea, without ony impediment, he may on na way-is be ſtoppit of his poſſeſſioun be ony man, be in-putting of ony nettis upon the ſaid water, or within the ſea mark, on ather ſide of the part and entres of the ſaid water in the ſea, drawand the ſaid net upon his awin land, or upon ony uther man's ground, thairthrow ſtoppand and makand impediment to ſalmond fiſh to enter within the mouth of the ſaid water: And gif he dois in the contrare, he ſould be decernit to deſiſt and ceis fra all farder ſtopping and impeding of the ſaidis fiſches to enter within the mouth of the ſaid water, quhilk pertenis to the ſaid perſoun that is moleſtit, be virtue of his infeftment and poſſeſſioun, to cum to the fiſching thairof, of the quhilk he and his predeceſſouris have bene in poſſeſſioun, as ſaid is; and mairover ſould refound, content and pay to the complenar, the damnage, coiſtis and skaithis ſuſtenit be his default. 12 *April.* 1559, *The Quene* contra *Ladie* Innes. 18 *April.* 1559, *Priour of* Pluſcarden *contra Laird of* Innes, 1 *t. c.* 769.

C. XIV.

THE bind of ſalmond ſould be conform to the meſour of *Hamburgh*, *Ja.* III. *fol.* 64. *act.* 95. 4 *Julij*, 1476. quhilk ſould contene 14 gallonis, *Ja.* III. *fol.* 78. *act.* 131. 1 *Octob.* 1487. The maker of the bind utherwayis payis ane unlaw of 10 *s. Ja.* IV. *fol.* 100. *act.* 84. 26 *Junij*, 1493.

C. XV.

THE meſour of ſalmond ſould contene 12 gallonis of the *Striviling* pint. *Ja.* VI. *P.* 4. *c.* 5. *ult. April.* 1573.

C. XVI.

MESOURIS of fiſch ſould be markit. *Ja.* V. *fol.* 139. *act.* 90. 14 *Mart.* 1540.

C. XVII.

OF ſlauchter of reid fiſch or kipper. *Ja.* II. *fol.* 44. *act.* 94. 6 *Mart.* 1457. *fol.* 54. *act.* 45. 20 *Novemb.* 1469. *Ja.* IV. *fol.* 87. *act.* 32. 15 *Feb.* 1489. *&* *fol.* 105. *act.* 107. 11 *Mart.* 1503.

C XVIII.

OF reid fiſch, ſmoltis, and ſlaying of ſalmond in forbidden time. *Ja.* V. *fol.* 120. *act.* 17. 7 *Junij*, 1535.

C. XIX.

ANENT blak fiſch, and ſlauchter of ſmoltis. *Ja.* VI. *fol.* 21. *act.* 37. 15 *Decemb.* 1567.

C. XX.

ANENT the deſtructioun of cruives and zairis, ſlauchter of reid fiſch be wandis, or utherwayis. *Ja.* VI. *fol.* 15. *act.* 23. 20 *Octob.* 1579.

Communia judiciorum criminalium.

C. I. Of thame that fleis to girth.

IT is ſtatute and ordanit, that gif ony reivar or theif fleis to halie kirk, and thair makis opin repentance, and grantis his fault and treſpaſs, and deſiris forgiveneſs for the love of God, to quhais houſe he is cum for ſaifing of his life; he ſall be remittit and obtene peace,

ſwa that he may not efterwart be accuſit criminallie thairfoir; notheles he ſall mak reſtitutioun of the gudis, or of als mekill, to thame quhom fra he reft or ſtaw the ſamin; and alſwa ſall mak ane amendis to the King, conform to the law of the land; and mairover ſall ſweir ſolemnlie, that he ſall not in ony time thairefter commit or uſe ony reif or thift: And gif he has not ſufficient gudis, to mak reſtitutioun, as ſaid is, efter that he has done the reſt of the premiſſes, he ſall peciabillie paſs and remane furth of the realme, untill he be reconcilit to the King. *Item*, Gif ony treſpaſſour fleis to the kirk, deſirand to be clengit, and declarit innocent of ony crime laid to his charge, becauſe he feiris ony wrang or injurie to be done to him be the Judge befoir quhom he ſould anſwer; it ſall be leaſum to him to paſs peciabillie to the King's court, and thair find borgh and pledges, that he ſall anſwer lauchfullie to his perſewar: And gif he be thair purgit and clengit be the law of the realme, he ſall paſs quite; bot gif he be juſtlie and lauchfullie convict of the crime that is laid to his charge, he ſall ſuffer puniſhment conform to the law of the realme, and according to the nature of the crime. *Item*, Gif ony treſpaſſour fleis to the kirk, affirmand himſelf to be clene, and alledge that he dois the ſamin for feir that he micht not, gif he wer attachit, find borgh in ſic ane place as it ſould pleiſe the Judge to cauſe him to be attachit in; in this cais he ſall mak his purgatioun be ane condigne aſſiſe, and paſs quite, gif he happinis to be clengit; utherwayis, beand fylit, ſall ſuffer puniſhment, as accordis of the law. *Lib.* 4. *c.* 61. *Aſſiſ. Reg. Da. c.* 39.

C. II. TRESPASSOURIS may be perſewit criminallie or civillie. *Stat.* 1. *Ro. Bruce, c.* 2. *Stat.* 2. *Ro. Bruce, c.* 4.

C. III. OF ſuddane ſlauchter, and fleing to girth. *Vid. Ja.* II. *fol.* 53. *act.* 43. 20 *Novemb.* 1469. *Ja.* III. *fol.* 60. *act.* 76. 20 *Novemb.* 1475. *Ja.* V. *fol.* 121. *act.* 25. 7 *Jun.* 1535. *Mar. R. fol.* 160. *act.* 4. 20 *Junij*, 1555. *Lib.* 4. *c.* 6.

C. IV. He quha is clengit, beand accuſit criminallie, may not be perſewit civillie. ANE beand indytit and accuſit criminallie befoir the Juſtice, for ony cauſe or crime, and clengit and maid quite thairof, he ſould not efterwart be perſewit be the ſamin partie civillie, befoir the civil Judge, for the ſamin cauſe. *Pen. Mart.* 1501, *Lord* Drummond *contra* Ninian Roſs. 21 *Junij*, 1564, Elizabeth Swintoun *contra* Chriſtall Home, 1 *t. c.* 198.

C. V. The defendar aſſoilzeit at the perſewar's inſtance, may nevertheles be perſewit at the King's inſtance. GIF ony complaint or cauſe of life and limb is perſewit befoir the Juſtice, or the Schiref, be way of challenge, betwix the perſewar and the defendar, and it happin the perſewar's clame to be caſtin, and the defendar aſſoilzeit, be reſſoun of ony lauchful exceptioun and defence proponit be him; nevertheleſs the Schiref, or the Juſtice, be reſſoun of his office, may tak inquiſitioun, be ane gude and leill aſſiſe, of the crime quhairof the ſaid defendar was befoir accuſit and aſſoilzeit at the perſewar's inſtance, and puniſh him thairfoir, for the King's part and interes, according to the law, gif he beis fund culpabill and guiltie. *Lib.* 4. *c.* 58. *Mod. ten. cur. c.* 45.

GIF

GIF ony perſoun, accuſit for ane crime and treſpaſs, is clengit and maid cleir thairof be ane lauchful exceptioun, or be ane condigne aſſiſe, he may at na time thairefter be callit or perſewit thairfoir be him at quhais inſtance he was perſewit and clengit. *Leg. port. c.* 353. *lib. commiſſ. Nam poſt abſolutionem, idem crimen, ab eodem, in eundem, inſtaurari non poteſt. Lib.* 4. C. VI. He quha is anis maid quite, may not be efterwart accuſit.

TRESPASSOURIS beand convict ſould not be redemit. *Stat.* 1. *Ro. Bruce, c.* 2. *Stat.* 2. *Ro. Bruce, c.* 3. C. VII.

ITEM, It is ſtatute, that gif ony perſoun committis ane treſpaſs, and thairby incurris the pane of ane unlaw, he ſall pay allanerlie ane unlaw, and may not thairefter be unlawit ofter than anes thairfoir; becauſe ane unlaw allanerlie, and na ma, ſall be gevin for ane fault or treſpaſs: And ſielike, gif ony perſounis, ane or ma, be fund borgh or cautioun for ony cauſe, and it happin that the borgh, be the law, incur the pane of unlaw, he ſall pay thairfoir only ane unlaw; for ane unlaw or amerciament allanerlie ſould be gevin for ane borrow-gang, albeit thair be divers and ſindrie borghis. *Aſſiſ. Reg. Da. c.* 28. C. VIII. For ane fault ane unlaw allanerlie may be askit.

ANENT rebellouris and unreſſonabill men, being recept and haldin within caſtellis. *Ja.* II. *fol.* 26. *act.* 4. 13 *Mart.* 1438. C. IX.

FOR in-bringing of treſpaſſouris, and defending of thame at the bar. *Ja.* III. *fol.* 75. *act.* 108. 1 *Octob.* 1487. C. X.

IN criminal cauſis the perſewar ſall have four freindis, and the defendar ſax allanerlie. *Mar. Reg. fol.* 162. *act.* 15. 20 *Junij*, 1555. C. XI.

OF remeid and punitioun of divers crimes. *Ja.* II. *fol.* 29. *act.* 6. 2 *Aug.* 1440. C. XII.

THAT the law be haldin quhair the treſpaſs is done. *Ja.* I. *fol.* 25. *act.* 165. 22 *Octob.* 1436. C. XIII.

THE perſewar ſould find cautioun for reporting the letteris. *Ja.* V. *fol.* 125. *act.* 36. 7 *Junij*, 1535. C. XIV.

ANENT leagues, and bandis of mantenance and manrent null, *Ja.* I. *fol.* 6. *act.* 33. 12 *Mart.* 1434. *Mar. Reg. fol.* 163. *act.* 17, 20 *Junij*, 1555. C. XV.

AT *Perth*, in time of King *David*, all Biſchoppis, Abbotis, Erlis, Baronis, Thanis, and the haill bodie and commountie of this realme, band and obliſt thame, be ſwearing of ane aith in maiſt ſolemn form, that in na time cuming thay ſall not recept nor mantene theives, men-ſlayeris, reivaris, murthereris, nor na utheris treſpaſſouris; that thay ſall mantene the King's Juſtice and Officiaris of law at thair powar, and ſall bring and exhibite befoir the Juſtice all treſpaſſouris, als weill beand thair awin men as utheris, quhairever thay may be apprehendit; that thay ſall tak na bud nor money for jugd- C. XVI. Treſpaſſouris ſould not be mantenit.

judgment to be done, or not to be done, throw the quhilk the law may be ſmoirit, or juſtice remane unexecute; that thay ſall, efter thair powar, aſſiſt and help the King's Grace, thay beand requirit thairto, in taking inquiſitioun, and puniſhing of treſpaſſouris; that thay, beand in like maner chargit, ſall beir leill and trew teſtimonial, ilk ane of that quhilk is done in the court of the uther; and quha ſa beis convict to have done in the contrare of this preſent law and conſtitutioun, he ſall tyne his court, and foirfalt the ſamin in all time thairefter. *Lib.* 4. *c.* 20. *Stat. Will. R. c.* 5.

Item, It is ſtatute and ordanit, that na Erle, Baron, nor uther frehalder ſall receipt ony treſpaſſour within his juriſdictioun or dominioun, under the pane of tinſel of his court in all time cuming. *Leg. Mal. Mak. c.* 4.

C. XVII. In quhat caiſis a treſpaſſour may be impreſonit or lettin to borgh.

IT is ſtatute and ordanit, that na freman be impriſonit for complaint at the inſtance of ony man, ſa lang as he has ſufficient borgh and ſovertie to anſwer as law will to the partie on him complenand, except it be in ſic cauſis in the quhilkis he ſould not be lettin to borgh, *viz.* gif he be takin with reid and freſh hand of man-ſlaughter; and gif he be apprehendit in hand-havand with thift or reif: In the quhilk caiſis, and utheris ſiclike, the treſpaſſour, als ſone as he is tane, ſould be condemnit be the law: Bot gif he be haldin attour ane nicht, he may be borrowit be his Lord, to anſwer as law will. *Item*, He that committis ony greit tranſgreſſioun aganis the King, or ony greit man of the realme, ſould firſt be impriſonit for enormitie of the fault, and irreverence done to his ſuperiour. *Quon. attach. c.* 22. *Mod. ten. cur. c.* 40.

Item, Thir treſpaſſouris under-written ſould not be lettin to borgh, *viz.* He that is takin at the King or his Juſtice's command for ſlauchter; he that has brokin the preſoun; he that is ane publict and notorious theif; he that is takin for burning or felonie; he that is ane falſifier of money, or of the King's ſeill; he that is excommunicat, and thairfoir takin at the Biſchoppis command; he that is takin for treſoun, or for ony treſpaſs tuiching the King; he quha willinglie reſiſtis the King's command be word or writ; and alſwa all Baillies quha reſtis awand ony arerage in making of thair comptis. *Rob.* III. *c.* 16.

C. XVIII. Of Judge in criminal cauſis.

GIF ony man will perſew ane uther criminallie befoir ony Judge, he ſould knaw perfectlie gif the Judge has court of life or limb, or not; for gif the followar perſew criminallie, and the court has na powar to cognoſce thairanent, the defendar may repell him fra perſewing quhill he be of new ſummoundit and attachit agane. *Mod. ten. cur. c.* 13.

Item, Na court that is inferiour to ane baron-court, has powar to cognoſce anent life and limb, landis, tenementis, or eſchete, except ſum havand ſiclike libertie thairanent as is gevin and grantit to Baronis, ſic as ſum religious men havand in ſic cauſis the libertie and privilege of Baronis. *Quon. attach. c.* 25. *Mod. ten. cur. c.* 15.

C. XIX. Of ane accuſit be ane ill

AND it is to wit, that na man may ſit upon blude, except he be Baron, or fewar infeft with bludewit; and thairfoir the fré tenent of

of ane Baron, ſpiritual or temporal, may not ſit upon blude in his tenent's cauſe, bot ſould call and perſew the ſamin befoir his temporal ſuperiour, or befoir the Baillies of regalitie, gif he haldis of the kirk: And gif it happin his tenent to be convict thairin, the unlaw and profit of the blude pertenis to the ſaid fré tenent, and not to the ſuperiour, ſpiritual or temporal, 24 *Julij*, 1541, 2 *t.* *c.* 224. It is ſtatute be the King, with conſent of Prelatis, Erlis, and Baronis, that gif the ſuit (*ſequela*) of thré baronies appeiris and accuſis ony perſoun of reif, or ony uther treſpaſs, for the quhilk be the law he ſould ſuffer deith, and the defendar have not ane pledge or ſovertie, he ſall be hangit, or utherwayis ſuffer the deith, be reſſoun of the ſaid thré ſuitis allanerlie: And the like is to be underſtuid, gif he wantis ane pledge, and is accuſit be the evil fame of twa baronies, and the province in place of the thrid baronie: And ſiclike, gif he being evil demit be the ſuit and fame of ane baronie allanerlie, and has not ane pledge, and was in all time bygane of ane evil brute and fame, he ſall be in like maner hangit; becauſe ane evil fame, with the ſuit of ane baronie, is ſufficient to gar him die the deith: Bot na perſoun ſall be condemnit for ſimpill fame and evil brute of ane crime or treſpaſs; for in this cais the deliverance of ane leill and ſworn aſſiſe is requirit. *Aſſiſ. Reg. Da.* *c.* 34.

fame and brute.

IT is ſtatute and ordanit, that na perſoun ſall be judgit, nor reſſave judgment be ony inferiour perſoun, bot be his awin Peir, as ane Erle be Erlis, ane Baron be Baronis, ane ſub-vaſſall be ſub-vaſſallis, and burgeſſis be burgeſſis: Bot ane leſs and inferiour perſoun may be judgit be ane ſuperiour, beand of greiter eſtait and dignitie. *Quon. attach. c.* 52. *Aſſiſ. Reg. Da. c.* 8.

C. XVIII. Ilk man ſould be judgit be his Peiris.

Item, It is ſtatute, gif ony Knicht is indytit in the Juſtice air for ony treſpaſs, and thairfoir is put to the knawlege of ane inqueſt, he ſall paſs and thole the aſſiſe of gude and leill Knichts, or of fré tenentis havand heritage. *Stat. Alex. c.* 2.

CRIMES ſould be judgit be ane aſſiſe. *Aſſiſ. Reg. Da. c.* 30. *Stat. Alex. c.* 2, 3, 6.

C. XIX.

GIF twa perſounis be callit and perſewit for ane crime, the ane for the principal deid, and the uther for command gevin to him to do the deid, or the ane for thift, the uther for receipting thairof; he that is defamit for the doing of the deid, ſould be firſt perſewit for the ſamin befoir him that is defamit for giving of the command: And ſiclike, he that is defamit for thift, ſould be accuſit befoir him quha is accuſit of recept: And gif he that is defamit of the doing of the deid of thift is maid quite of the crime laid to his charge, the uther, quha is defamit of giving command, or of recept, ſall thairby be maid quite, without ony aith of aſſiſe; for it is ſtatute, that the receiptar, or the complices, ſall not be compellit to anſwer untill the aſſiſe proceid and deliver tuiching the principal partie. *Lib.* 4. *c.* 52.

C. XX. The principal partie ſould be accuſit befoir the complices.

Item, Na receiptar of thift ſould be puniſht untill the committar of the thift be firſt convict or attachit thairfoir; and he beand fylit, it ſall be done as is commounlie ſaid, he that conſentis to

ane crime, and he that committis the ſamin, ſall be puniſht with the like pane. *Quon. attach. c.* 84.

Item, He quha dois the injurie or crime ſould be firſt accuſit thairfoir; *nam qui prius agit, prius appellatur.*

Item, In criminal actiounis, he quha firſt complenis ſall be firſt heard, and his complaint endit, *Quon. attach. c.* 84. Bot gif ony man, be ſtraik or fechting, makis ane uther blae and bludie, he quha is blae and bludie ſall be firſt heard, quhidder he cumis firſt to complene or not: And gif thay be baith blae and bludie, he quha firſt accuſis ſall be firſt heard. *Leg. burg. c.* 85.

C. XXI. Of ane woman alledge and hir to be with bairn.

QUHEN ony woman, beand accuſit of ony crime, alledgis hirſelf to be with bairn, thairby to decline or delay judgment or dome aganis hir, the Judge ſould chuſe and appoint the houſe of ſum honeſt matron, and command the ſaid matron to paſs thair, that the veritie may be knawin; and thairefter, gif the veritie cannot be utherwayis tryit, he ſall cauſe thré midwyves, of gude knawlege and life, to convene thair, and tak inquiſitioun of the ſaid woman, efter thair airt, thay beand ſworn be the greit aith thairto: And gif thay, or the maiſt part of thame, affirm hir to be with bairn, ſcho ſall be honeſtlie and ſurelie kept, untill the time of hir birth; and in the mene time the Judge ſall anſwer for hir to the King, and alſwa to the partie, gif ony compeiris to perſew hir; and quhen ſcho is lichter of hir birth, or quhen the time thairof is bypaſt, ſcho ſall be juſtifyit and demanit for hir treſpaſs, as ane woman not beand with bairn. *Stat.* 2. *Ro. Bruce, c.* 26.

C. XXII. Of gudis and geir pertening to him quha is accuſit of ony crime.

GIF ony perſoun is takin and apprehendit for ſlauchter, or ony uther felonie, for the quhilk he may be impreſonit, he ſall not be diſpoſſeſſit of his landis, tenementis, or movabill gudis, untill he firſt be convict of the felonie: Bot incontinent efter he is takin, the Coroner, Schiref, or his deputis, ſall cauſe leill and honeſt men of the countrey viſie and ſé all his movabill gudis, and cauſe the Judge of that place mak ane faithful inventar thairof; for the quhilk the ſaid Judge ſall find pledge, or uther ſovertie, to anſwer to the Juſtice, reſervand and deduceand to the treſpaſſour, and his familie, thair neceſſar expenſis, ſwa lang as he is in preſoun: And gif he efterwart is maid fré, and clengit of the crime, he ſall peciabillie bruik all and ſindrie his ſaidis gudis: And gif he beis convict, the ſuperplus of the gudis that is reſtand awand, efter the defalcatioun of his ſaid expenſis, ſall be diſponit, as is efterwart declarit. *De jud. c.* 152. *Iter. Camer. c.* 24.

C. XXIII. Of gudis and geir of him quha is fugitive.

GIF ony perſoun, for ſlauchter, thift, or ony uther ſiclike felonie, is fugitive, ſwa that he compeiris not to underly the law thairfoir, he, be reſſoun of his fleing, tynes his movabill gudis, and alſwa may be outlawit and put to the horn, ſuppois the cauſe quhairfoir he fleis be trew or not; and ſuppois he return befoir his denunciatioun to the horn, he ſall not recover his movabill gudis, *Lib.* 2. *c.* 54. And mairover, he beand denuncit, his over-lord, of quhom he haldis his landis and tenementis, may put his handis to the ſamin, and hald thame in his handis untill the treſpaſſour compeir in judgment, and, failzieing of his compeirance, untill the time of his deceis;

ceis; ſwa that ſa lang as he leivis naturallie, and compeiris not, his air may clame na richt nor titill to his landis. *Aſſiſ. Reg. Da. c.* 27. *Lib.* 2. *c.* 54. *in fine.*

C. XXIV. Of the gudis and geir pertening to him quha is convict for ony crime.

ALL reivaris and raviſcheris of women, or murthéraris, juſtlie or injuſtlie, and wilful and malicious raiſeris of fire, ſall compeir and anſwer befoir the King's Juſtice; and thay beand convict, all and haill thair gudis and geir ſall pertene as eſchete to the King, and na part thairof to ony Baron, *LL. Mal. Mak. c.* 4. Bot gif ony treſpaſſour, haldand of ony uther over-lord than the King, is convict for ony ane of the pointis of the crown, na part of his landis, gudis or geir, pertenis to his over-lord; for na Baron or Lord has powar to decide or decern ony of the ſaidis pointis of the crown. *Mal. Mack. c.* 4.

Item, All landis, gudis, or uther geir, movabill or immovabill, pertening to him that is convict for treſſoun aganis the King, ſould pertene to the King, without ony recovery of the air, except the ſamin be with the King's ſpecial diſpenſatioun, *Mal. Mack. c.* 4. And the like is to be underſtuid of utheris treſpaſſouris havand landis, heritage, or uther gudis quhatſumever, and haldand of the King in cheif, and is adjudgit and condemnit to deith, *LL. Mal. Mack. c.* 4. Becauſe, gif ony perſoun is convict of felony befoir ane Judge, or be his awin confeſſioun, and he hald of our ſoverane Lord the King in cheif, all his landis, gudis and geir, quhairever thay may be fund, within ony Lord's or Baron's heritage or juriſdictioun, ſould pertene and be applyit to our ſoverane Lord, and his uſe; and the air at na time may recover the ſamin: Bot gif he quha is convict haldis of ony uther over-lord than the King, all his movabill gudis pertenis to the King, and alſwa his landis ſall remane for zeir and day in the King's handis, and zeir and day being bypaſt, ſall return to the over-lord, bot his houſe and biggingis ſall be demoliſcht and caſtin to the ground, and his treis ſall be raiſit be the rute; for it is generallie to be obſervit, quhen ony perſoun, havand heritage, is lauchfullie diſheriſchit and foirfaltit in judgment for ony thing ſpokin or done be him, his heritage ſall pertene as heritage to his over-lord. *Lib.* 2. *c.* 53. *De jud. c.* 81.

C. XXV. Of the gudis of him that deceiſſis unteſtat.

QUHEN ony perſoun unteſtat is condemnit to the deith, all his movabill gudis pertenis to his over-lord: And gif he has ma Lordis than ane, ilk ane of thame ſall have the gudis and cattel fund and apprehendit in his awin domain, *Lib.* 2. *c.* 51. *Quon. attach. c.* 30. *De jud. c.* 62. The quhilk law and conſtitutioun ſould be extendit, als weill to the King's Grace within borgh, as to Baronis and uther Lordis without burgh. *Leg. foreſt. c.* 42.

C. XXVI. Of treſpaſſouris airis.

GIF ony perſoun committis ſlauchter, thift, or ony uther ſic felonie, his air, not conſenting to the committing thairof, ſould not thairfoir be diſheriſhit: And gif the treſpaſſour ſufferis deith thairfoir, conform to the lawis of the realme, his air, throw his treſpaſs, ſall not incur ony damnage or skaith, *Aſſiſ. Reg. Da. c.* 27. And thairfoir, efter his predeceſſour's deith, be the law, he ſould recover the landis and heritage quhilk pertenit to his predeceſſour, and ſall peciabillie bruik and joiſe the ſamin without contradictioun or im-

impediment of ony man, *Mod. ten. cur. c.* 22. *Quon. attach. c.* 13. Becauſe ane air not conſentand to the felonie committit be his predeceſſour, ſould not be diſheriſhit thairfoir, *Lib.* 2. *c.* 54. For the fault or crime committit be the father ſould not be ane cauſe to diſheriſh the ſone, the brother, or ony uther perſoun bot himſelf allanerlie. *Lib.* 2. *c.* 55.

Item, Gif ony perſoun has committit ony felonie, and was never convict in judgment thairfoir, his wife, be reſſoun of his felonie, ſall not tine hir dowrie, efter his deceis, nor zit his air ſall tyne or foirfalt his landis or heritage: Attour, albeit the treſpaſſour beand preſent in court befoir the Juſtice to heir dome, and ſentence pronuncit aganis him, happin to fall down deid in judgment befoir the geving of dome, his wife ſall not thairfoir tyne hir dowrie, nor zit his ſone his heritage. *De jud. c.* 155.

C. XXVII. Reſtoring of treſpaſſouris.

QUHEN ony perſoun is lauchfullie outlawit and foirfaltit, and thairefter is reſtorit be the King, he may not obtene nor ask mair be reſſoun of his reſtitutioun than thay landis quhilk wer tint, and haldin of the King; and thairfoir he, nor his airis, may not clame, be virtue of the ſaid reſtitutioun, ony landis and heritage quhilk he tint, and was haldin of ony uther over-lord, the quhilkis landis nather he, nor his airis, may recover, bot be the over-lord's ſpecial grace, benevolence, or conſent; for the King may remit the crime, and the rebellioun, bot he may on na wayis thairby prejudge or hurt ony uther man anent his richt and titill. *Lib.* 4. *c.* 55. *De jud. c.* 151.

C. XXVIII. THAT na courtis of guerra be haldin. *Ja.* III. *fol.* 61. *act.* 85. 20 *Novemb.* 1475.

C. XXIX. Anent the taking of ſorneris, theives, outlawis, and ſlauchter of wolfis.

QUHATEVER he be that bringis ane theif, ſorner, or ane man at the King's horn, to the Schiref of the ſchire, or ſlayis ane auld wolfe, and bringis his head to the Schiref, he ſall have ane pennie for ilk fyre houſe in the parochin, in the quhilk the theif, ſorner, or man at the King's horn is takin, or the auld wolf is ſlane; the quhilk dewtie the Schiref or Baillie of the parochin ſall cauſe be payit and deliverit to the doer of the premiſſes. 15 *Feb.* 1492.

Item, Gif ony theif, ſorner, or man at the King's horn, or wolf, cumis to ony parochin or town, the indwellaris and nichtbouris of the ſaid parochin and town ſall incontinent give the cry, and tak the ſaid treſpaſſour, or ſlay the ſaid wolf: And gif the ſaid treſpaſſouris be of mair powar than the perſounis of the place quhairto thay ar cum, that thairefter the ſaid cry be maid, as ſaid is, the haill parochin and countrey lyand about ſall follow upon the treſpaſſouris, or wolf, and tak and ſlay thame; and quha failzies, and cumis not to the ſaid cry, for ſupplie of his nichtbouris and countrey, the Lord or Baillie that has that place in governance, ſall tak of the ſaid perſoun, failzieand as ſaid is, ane wedder, the ſecund time ane kow, the thrid time his perſoun ſall be tane and brocht to the Schiref, to be puniſcht as the treſpaſſouris ſould be puniſcht thameſelfis, as favouraris and aſſiſteris of thame; and alſwa all his movabill gudis ſall be eſchetit to the King's uſe: And quhair the Lord or Baillie of the ground foirſaid failzies in the executioun of ony thing

abone

abone written, that it be ane point of dittay upon him, and he, beand convict thairof befoir the Juſtice, ſall pay twentie pund to the King, and reform all the ſkaith done to the perſounis indwellaris within his boundis be ſic treſpaſſouris. 1 *Feb.* 1495, 1 *t. c.* 76.

Anent remiſſiounis.

C. I. HE quha takis him to his remiſſioun ſould ſatisfie the partie. *Ja.* II. *fol.* 42. *act.* 83. 6 *Mart.* 1457. *Ja.* I. *fol.* 8. *act.* 50. 12 *Mart.* 1424.

C. II. THAT the greiteſt crime be ſpecifyit in the remiſſioun. *Ja.* IV. *fol.* 103. *act.* 96. 11 *Mart.* 1503.

C. III. THAT na remiſſioun ſall be gevin for ſlauchter upon foirthocht felonie. *Ja.* IV. *Ibid. act.* 97.

C. IV. NOR for burning of cornis in ſtakkis, raiſing of fire, and raviſching of women. *Ja.* V. *fol.* 140. *act.* 99. 14 *Mart.* 1540.

C. V. RESPECTIS diſchargit, and ordanit that thay prejudge not the partie. *Ja.* III. *fol.* 70. *&* *fol.* 71. *act.* 110. 24 *Feb.* 1483.

Anent eſchetis.

C. I. Divers kindis of eſchetis. IT is to wit, that thair ar divers kindis of eſchetis; for ſum fallis in movabill gudis, and ſum fallis in immovabill gudis, as landis or tenementis. Eſchetis of movabill gudis ſumtimes fallis be the poſitive law, and ſum throw divers and ſindrie uther chances: Eſchetis of immovabill gudis ar ſumtimes temporal, ſumtimes perpetual. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

C. II. Eſchetis of movabill gudis; and firſt of hurdis. BE the poſitive law and richt ſum eſchetis, as accident, fallis and pertenis to the King, *viz.* all landis, wateris, places, or uther thingis within the realme, not pertenand to ony perſonn, ar the King's eſchete; and thairfoir all hurdis and theſauris that ar hid under the zeird, or abone the zeird, quhairof the lord and awner is not knawin, the ſamin aucht and ſould pertene to the King as eſchete: Bot gif the Lord or awner thairof is or may be knawin, the ſamin on na wayis ſould be eſchete. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

C. III. Of a rentall. ANE beand rentallit in ony landis, and thairefter denuncit rebel, quhairthrow his eſchete is diſponit be the King, the ſaid rental cumis under the eſchete gudis, like as uther movabill gudis and takkis. 29 *Junij*, 1556, *The Quene's Advocat, and* George Craufurd, *contra* James Archbald, 1 *t. c.* 1208.

C. IV. Of tak and aſſedatioun. ASSEDATIOUN of ninetene zeir takkis, debtis, and ſteilbow gudis

gudis ar comptit and rekonit to be movabill gudis, and thairfoir cumis under eſchete of movabillis. 1 *Jan.* 1540, *Laird of* Glengarnok *contra Laird of* Kilbirnie, 2 *t. c.* 29.

Item, Ane rental, tak, or aſſedatioun of liferent, may cum and fall under eſchete. 1 *Decemb.* 1555, *Quene's Advocat* contra *N.* Ardrie.

Item, Ane tak and aſſedatioun beand ſet to divers and ſindrie perſounis, to ilk ane efter utheris deceis, gif the firſt perſoun beand in poſſeſſioun thairof, and beand denuncit rebel and put to the horn, happpinis to deceis befoir the iſche of the ſaid tak, the remanent zeiris contenit in the ſaid tak to rin cumis not under eſchete of the ſamin, bot pertenis to the nixt perſoun contenit in the tak; bot all and ſindrie the zeiris and termis thairof, fra his denunciatioun to the time of his deceis, cumis under eſchete, be reſſoun of rebellioun, and thairfoir may not pertene to the ſecund perſoun nixt followand him in the ſaid aſſedatioun. 8 *April.* 1557, *Laird of* Kinfaunis *contra Laird of* Craigie, 2 *t. c.* 368.

Item, Gif ony perſoun be denuncit rebel, and put to the horn, the fermis, maillis and dewties pertenand and auchtand to him the time of the denunciatioun, and in like wayis ſa lang as he ſall happin to remane at the horn, cumis under eſchete. 11 *Mart.* 1554, *Laird of* Meldrum *contra Laird of* Straloch, 2 *t. c.* 358.

C. V. Eſchete of cattel within forreſt.

ITEM, Sum eſchetis of movabill gudis ſumtimes may fall in cattel; for gif oxin beis fund and apprehendit divers and ſindrie times feidand within ony Lord's forreſt, not beand zokkit in cairt or wane, thay may be eſchetit to the uſe of the Lord of the forreſt. *Item*, Cattel may be maid eſchete, quhilk ar fund and apprehendit paſtourand within ony man's medowis or heritage, efter the law maid to be kept in ſic caiſis. *Item*, Gif ony perſoun is apprehendit be the foreſtar within the King's or ony uther Lord's forreſt, with horſe or with wane, havand away grene wod, he ſould be attachit be ſicker pledges to that ilk Lord's court, with the ſamin horſe, or ony uther beiſt, in hyde and hair, to be enterit at ane certane day in the ſaid court; at the quhilk day gif he compeiris, and alſwa enteris the ſamin beiſt within court, the Lord of the court may clame the beiſt as eſchete, and recover and obtene the ſamin be dome of court: Bot it is to wit, that the eſchete beand tane be the Lord, as ſaid is, he may not tak ony unlaw or amerciament for the ſaid grene wod: And mairover, the ſaid perſoun quha was attachit as ſaid is, may not in ony wayis be repledgit to his awin Lord's court, howbeit he be lauchfullie askit to be remittit and borrowit thairto; bot he aucht and ſould anſwer in the Lord's court to quhom the ſaid treſpaſs was done. *Mod. ten. cur. c.* 37. *Quon. attach. c.* 30.

C. VI. Eſchete of ane horſe that drownis or ſlayis the rider.

ITEM, Thair is ane uther maner of eſchete in movabillis, *viz.* ane undantonit horſe, or ane heid-ſtrong horſe, havand ony man rideand upon him, caryis and caſtis the rider, aganis his will, over ane craig, or ony uther heich place, or in ane water, quhairthrow he deceiſſis or drownis, the horſe ſould pertene to the King be reſſoun of eſchete: Bot gif ony man, rideand upon ane tame and weill dantonit horſe, cauſis him to tak the water, be ſcharpneſs of the ſpurrls, and ſwa raſchlie rideand the water happinis to drown,

that

that horſe ſall not be eſchetit to ony man; for it was not the fault of the horſe, bot of the man quha fuliſchlie raid the water. *Item*, It is to wit, that all maner of beiſtis, that ſlayis ony man, of the law ſould be eſcheitit. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

C. VII. Eſchete of ane waif beiſt.

ITEM, Quhair ony waif beiſt is fund within ony man's landis, the ſamin ſould be divers and ſindrie times proclamit opinlie upon the mercat-day, or in the kirk, or at the principal place of the ſchiresdome; utherwayis the with-halder of the beiſt may be accuſit be the awner thairof, for thift of the ſamin, and may not be decernit to be eſchete, quhill zeir and day be bypaſt efter the finding thairof; for it is leaſum to the awner within zeir and day to cum and hamehald the ſaid beiſt; the quhilk gif he failzies to do, zeir and day beand bypaſt, the beiſt may be decernit and adjudgit be dome of court to pertene be reſſoun of eſchete to the Lord of the ground quhairin the ſamin was fund. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

C. VIII. Eſchete of ane quhaill or fiſch fund within the ſea mark.

GIF ony quhaill is fund within the flude or ſea-mark, the ſamin ſall pertene to the King as eſchete, ſwa that the Baron ſall have his part thairof, conform to the conſuetude of this realme, reſervand the teind to the King. *Item*, Gif ony tymbrell, utherwayis callit ane littil quhaill, or ony uther fiſch, is fund within the ſea-mark foiranent the land (*in terra*) of ane Baron, or uther frehalder, the quhilk fiſch may be drawin outwith the tynnel of the ſea to the land, with ſax oxin zokkit in ane wane, the ſamin ſould pertene to the Baron or frehalder: And gif the wane happinis to brek within the ſea-mark, the fiſch ſall pertene to the King as eſchete: Bot gif the ſamin brekkis within the landis of the Baron or frehalder, the Baron or frehalder ſall have the fiſch be reſſoun of eſchete. *Leg. foreſt. c.* 17. *De jud. c.* 27.

C. IX. Of him quha is ſlane with the quheill of ane miln.

GIF ony man happinis to fall in ane miln-dam, and is born down to the miln quheill, and is ſtricken to the deith, the miln ſall not thairfoir be eſchetit; becauſe nathing ſould be decernit or adjudgit to be eſcheit, bot gif it be for tranſgreſſioun, crime or fault done be that ilk thing: And it is certane, that the Lord or awner of the miln has heirin done na fault, nor committit ony treſpaſs, ſeing it is leaſum to him to have ane miln: And the miln has done him na fault; for it is ane deid thing, without life or ſenſe, and thairfoir may not faill or do injurie or harm to ony man. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

C. X. Eſchetis of immovabill gudis.

SUM eſchetis of immovabill gudis, as of landis and tenementis, ar temporal, and induris for ane certane time allanerlie, as of the landis of him quha is convict of felonie, thift, or ſlauchter, the quhilk ar eſchete for the lifetime of the treſpaſſour, and na langer, and efter his deceis may be recoverit be his air: And ſum uther eſchetis of immovabill gudis ar perpetual, and induris for evermair, as the eſchete of landis and tenementis of tratouris, quhilk ar confiſcat fra thame and thair airis in all time cuming. *Quon. attach. c.* 30. *Mod. ten. cur. c.* 37.

THE

C. XI. THE denunciatioun of the rebellioun ſould preceid the gift of eſchete. *Ja.* VI. *fol.* 20. *act.* 30. 15 *Decemb.* 1567.

C. XII. The donatour may not poind without declaratour of ane Judge.

IT is ſtatute and ordanit, that it ſall not be leaſum to ony perſoun, alledgeand him to have gottin the eſchete of ony of our ſoverane Lord's lieges, to poind or diſtreinzie for ony of the ſaid eſchete gudis, untill the time the perſoun be callit befoir the King's Juſtice, or his deputis, and convict for the crimes for the quhilk his eſchete is gevin; and attour, ordanis in time to cum na eſchete of ony perſounis to be gevin untill the time the ſaid perſounis be callit thairfoir; and utherwayis that the ſignet, privie ſeill, nor greit ſeill, anſwer not upon the giftis of ſic eſchetis. 9 *Novemb.* 1528, 1 *t. c.* 343.

Item, The donatar to the eſchete of ony perſoun quha is denuncit rebel, and put to the horn, may not, be reſſoun of his gift, at his awin hand intromet with ony gudis and geir pertening to the rebel the time of his denunciatioun, bot aucht and ſould raiſe letteris conform to his gift, and obtene ane declaratour of ane Judge, decernand the ſaidis gudis and geir to pertene to him as donatar. *Ult. Novemb.* 1575, Marion Mureheid *contra the gudeman of* Humbie, 2 *t. c.* 376.

C. XIII. The ſuperiour ſould reſſave the donatar of the eſchete in the denuncit rebel's place.

GIF ane, havand tak and aſſedatioun of ony landis, or uther poſſeſſioun, for termis to rin, beis denuncit, and put to the horn, and his eſchete of the takkis diſponit to ane uther partie, he to quhom the ſamin is diſponit, may, conform to his gift and diſpoſitioun, raiſe letteris, to charge and compell the Lord and proprietar of the ſaidis landis to reſſave him in the place and rowme of him quha is denuncit rebell. 7 *Feb.* 1533, Johne Creichtoun *contra Priour of* Sanctandrois. *Ult. Julij*, 1550, Alexander Guthrie *contra* Andro Guthrie, 1 *t. c.* 641.

C. XIV. Eſchete of him quha ſlayis himſelf.

GIF ony man ſlayis himſelf, all gudis and geir quhilk pertenit to him the time of his deceis, aucht and ſould pertene to the King as eſchete. 18 *Feb.* 1506, *The King* contra Johne Hepburne, 1 *t. c.* 253.

C. XV. Eſchete of eccleſiaſtical perſounis.

THE eſchete of eccleſiaſtical perſounis, be the uſe, conſuetude, and law of this realme, may be gevin or diſponit be the King to ony perſoun or perſounis, allanerlie in ſic caiſis as his Hienes may call thame and convict thame intill: And gif ony diſpoſitioun be utherwayis maid be his Hienes, the ſamin is of nane avail, and may be reducit be the Lordis of counſall. 7 *Maij*, 1529, 1 *t. c.* 340.

C. XVI. Eſchete within the regalitie of *Sanctandrois*.

GIF ony perſoun be denuncit rebel, and put to our ſoverane Lord's horn, for quhatſumever crime, ſic as treſſoun or leſe-majeſtie, all the movabill gudis and geir pertening to him the time of his denunciatioun, and being upon his landis pertening and haldin of the Biſchop of *Sanctandrois*, and being within the regalitie thairof, aucht and ſould pertene to the ſaid Biſchop as eſchete, and not to the King, nor his theſaurare. 15 *Decemb.* 1561, *Archbiſchop of* Sanctandrois *contra the theſaurare*, 1 *t. c.* 841.

GIF

GIF the Priour or Abbot of ony abbay or religious place be denuncit rebel, and put to the horn, the patrimony, rentis and profitis of the abbay fallis not under his eſchete; becauſe the ſamin is gevin to the up-halding of the place, and ſuſtentatioun of the convent, and na part thairof ordanit be the fundatouris thairof, particularlie to the Priour or Abbot, quha thairfoir is onlie Miniſter and Officiar to the convent; ſwa that his treſpaſs ſould not be hurtful or prejudical to thame in thair gudis and geir, thay being innocent of the crime committit be him. 29 *Jan.* 1565, *The convent of the abbay of* Sanctandrois *contra the Biſchop*, 2 *t. c.* 315.

C. XVII. Patrimonie, and rentis of ane abbay, cumis not under eſchete.

GIF ony perſoun dwelland within ony regalitie within this realme, committis ſlauchter, or ony uther crime, within the ſaid regalitie, or outwith the ſamin, quhairthrow his gudis and geir may fall under eſchete, the ſamin aucht and ſould pertene to the Lord of the regalitie, efter the tenour of his infeftment. 20 *Feb.* 1544, *Abbot of* Dumfermling *contra* William Stewart, 1 *t. c.* 977.

C. XVIII. Eſchete of perſounis within regalitie pertenis to the Lord of that regalitie.

GIF ony perſoun ſellis ony victuallis or fermis auchtand to him be his tenentis, or ony uther debtour, and thairefter committis ane crime, for the quhilk he is denuncit rebel, and put to the horn; the fermis or gudis ſauld be him on na wayis cumis under eſchete, gif the buyar thairof makis lauchful intimatioun to the tenentis or debtour, at ony time befoir the denunciatioun and executioun of the horning. 13 *Julij*, 1566, Francis Stewart *contra* William Birnie, 2 *t. c.* 318.

C. XIX. Of victual ſauld be ony man, quha thairefter is denuncit rebel.

GIF the gift of ony man's eſchete be diſponit to ane donatar, quhenever it happinis him to be denuncit rebel, or convict be ane aſſiſe, or to cum in will for the crime quhairupon he is accuſit; and thairefter beand accuſit for the ſamin crime, takis him to his componitour or remiſſioun thairfoir, the donatar has na richt nor titill to his gudis be reſſoun of eſchete. 10 *Maij*, 1569, Elias Spens *contra the Laird of* Anſtruther, 2 *t. c.* 335.

C. XX. Of him that takis him to his remiſſioun for ony crime.

GIF ony man is denuncit rebel, and put to the horn, na obligatioun, of ſowmis of money, or of uther dewties, maid to him at ony time, for all the dayis of his lifetime, cumis under eſchete; and thairfoir he, notwithſtanding the ſaid denunciatioun, aucht and ſould be obeyit of the ſaid liferent, obligatioun, and contentis thairof. 4 *Mart.* 1576, Nigell Montgomerie *contra the Erle of* Eglintoun, 2 *t. c.* 385.

C. XXI. Anent the liferent of him quha is denuncit rebel.

Anent horning.

QUHEN ony perſoun is outlawit and denuncit rebel lauchfullie, conform to the law of the realme, all richt and titill of gudis, geir, actiounis, or uther thing pertening to him at that time inſtantlie, and at the time of the denunciatioun, is devolvit and transferrit to his over-lord, or to the King: And gif he happinis to be relaxit or reſtorit efterwart, he ſall anſwer to his creditouris

C. I. The gudis and geir pertening to him quha is denuncit rebel fallis under eſchete.

ditouris for all debtis auchtand be him, als weill befoir the denunciatioun as efter the ſamin. *Lib.* 2. *c.* 54.

C. II. THE liferent of all vaſſallis beand zeir and day at the horn pertenis to the immediat ſuperiour. *Ja.* V. *fol.* 124. *act.* 35. 7 *Junij*, 1535.

C. III. POSSESSOURIS of beneſices, and uther eccleſiaſtical rentis, tynis thair liferentis, beand zeir and day at the horn. *Ja.* VI. *fol.* 9. *act.* 7. 26 *Jan.* 1572.

C. IV. The richt of ſucceſſioun foirfaultit be rebellioun, may be reſtorit be reſtitutioun.

ITEM, Gif ony man's ſone or air, induring his predeceſſour's lifetime, be denuncit rebel, for ony crime or cauſe, and thairefter, befoir his predeceſſour's deceis, is relaxit or reſtorit, albeit he tint and foirfaultit the richt of ſucceſſioun be reſſoun of his denunciatioun; nevertheleſs he recoveris the ſamin be virtue of his reſtitutioun, and thairfoir may ſuccede as air to his predeceſſour efter his deceis. *Lib.* 2. *c.* 54.

C. V. Quhat perſounis may not be denuncit rebellis.

ITEM, Be the law of this realme na perſoun may be outlawit that is minor, and within age, or is callit to compeir, and may not do the ſamin be reſſoun of ane juſt and lauchful impediment, as gif he be in preſoun and captivitie, ſwa that he may not compeir; or gif he be defendand ony actioun or cauſe in ane ſchirefdome, and at the ſamin time is perſewit and chargit to compeir in ane uther ſchirefdome for the ſamin cauſe. *Item*, Na man may be outlawit or denuncit rebel for ony crime, except he be firſt convict thairof: And gif ony perſoun be put to the horn utherwayis than is befoir ſaid, he ſould be relaxit, and the horning declarit null. *Item*, Gif ony perſoun is fugitive, believand that he has ſlane ony man, the quhilk is nather hurt nor ſlane, he ſould not be outlawit thairfoir; and gif he happinis to be denuncit, he ſould be relaxit. *Lib.* 2. *c.* 54.

C. VI. He quha is chargit to underly the law befoir the Juſtice, ſould be chargit be ane Officiar of armis.

GIF ony perſoun be chargit be our ſoverane Lord's letteris to find ſovertie to underly the law befoir the Juſtice and his deputis, for ſlauchter, or ony uther crime, the executour of the letteris aucht and ſould be the Schiref's Officiar, or Officiar of the King's Grace; utherwayis gif the ſaid perſoun be denuncit rebel, and put to the horn, be ony uther Officiar or Schiref in that part, the ſamin denunciatioun is of nane avail, and aucht and ſould be reducit. 25 *Junij*, 1535, William *Lord* Sempill *contra* Johne *Lord* Lyle, 1 *t.* *c.* 475.

C. VII. Of finding of ſovertie be him that is chargit to underly the law.

GIF ony meſſinger, be virtue of our ſoverane Lord's letteris, chargis ane man to find ſovertie to underly the law befoir the Juſtice, for ſic crimes as may be laid to his charge, and the perſoun that is chargit paſſis to get ane ſovertie, and thairefter returnis with the ſamin, and cannot find and apprehend the ſaid Officiar, and thairfoir findis the ſaid ſovertie to the Juſtice-clerk within dew time, as effeiris of the law; gif the Officiar in the mene time denuncis him rebel, and puttis him to the horn, he is wrangouſlie denuncit, and

and ſould be relaxit thairfra. 26 *Feb.* 1523, Richard Reidheuch *contra* Duncan Richie, 1 *t. c.* 402.

THE tenour of letteris of horning and indorſatioun may not be provin be witneſſis. *Ja.* VI. *fol.* 10. *act.* 31. 20 *Octob.* 1579. C. VIII.

GIF ony man is chargit be our ſoverane Lord's letteris to compeir and anſwer to ſic thingis as ſall be ſpeirit at him, within ſax dayis nixt efter the charge, under the pane of rebellioun, and putting of him to the horn, with command in the letteris to the Officiar, that gif he failzies thairintill, the ſaidis ſax dayis beand bypaſt, to denunce him rebel: And gif the Officiar denunce him rebel, and put him to the horn, na decrete nor declaratioun being gevin aganis him for his contumacie or non-compeirance within the ſaidis ſax dayis, the ſamin proceſs of horning is null, and ſould be reducit; becauſe he that was chargit aucht and ſould have bene deſyrit, befoir ony denunciatioun of horning be the Lordis, within the ſamin ſax dayis, to compeir, and ſould not have bene denuncit rebel, except he had firſt bene declarit contumax for non-compeirance. 27 *Novemb.* 1567, Pittarro *contra Lord Theſaurar.* 13 *Feb.* 1567, *Erle of* Mortoun *contra* Jeane Steuart. 12 *Decemb.* 1567, Alexander Guthrie *contra Maiſter* David Chalmer, 2 *t. c.* 856. C. IX. He quha is not declarit contumax, ſould not be put to the horn.

GIF ony perſoun is denuncit rebel, and put to the horn, for not finding of cautioun, or for ony uther crime or cauſe, and it be fund efterwart that the letteris raiſit aganis him wer not ordourlie proceidit: Or gif the proceſs of horning led and deducit aganis him be reducit, and declarit of nane avail, his eſchete fallis not, be reſſoun of the ſaid horning, in the handis of the King, or ony uther perſoun: And gif the ſamin be diſponit, or intromettit with, it aucht and ſould be reſtorit and deliverit agane. *Pen. Jan.* 1533, 1 *t. c.* 958. C. X. The proceſs of horning beand reducit, na eſchete ſould be gevin.

GIF ony perſoun havand tak and aſſedatioun of teindis to him and his aſſignayis, makis and conſtitutis ane aſſignay thairto, and the aſſignay purcheſſis letteris be deliverance of the Lordis of counſal upon his aſſignatioun, chargeand the occupyaris and poſſeſſouris of the landis to anſwer, and mak payment to him of the teindis thairof; he aucht and ſould firſt charge the ſaidis occupyaris and poſſeſſouris to heir and ſé the ſaidis letteris to be gevin; utherwayis the ſamin is wrangouſlie purchaſt and impetrat, and ſould have na executioun aganis thame: And gif ony of the tenentis be denuncit rebellis, and put to the horn, the denunciatioun, with the gift of eſchete, and all that followis thairupon is of nane avail. 23 *Jan.* 1567, Jonet Lumiſden *contra* Robert Melvill *and utheris*, 1 *t. c.* 1066. C. XI. Na letteris ſould be gevin to ane aſſignay be virtue of his aſſignatioun, except the tenentis be ſpeciallie callit thairto.

GIF ony perſoun is denuncit rebel, and put to the horn, quha, befoir his denunciatioun, was auchtand ony ſowmis of money or debt to ony creditour, and for payment thairof maid and conſtitute him aſſignay to ony maillis, fermis, or dewties pertening to him; the ſamin aſſignatioun, maid befoir the ſaid denunciatioun, is ſufficient, gif the creditour, to quhom the ſamin was gevin, maid lauchful intimatioun thairof, befoir the ſaid denunciatioun, to all perſounis C. XII. Of aſſignatioun maid be ane quha is thairefter denuncit rebel.

ſounis havand interes thairanent. 23 *Noviemb.* 1565, *Laird of* Tullibardin *contra* Robert Watſon *and* Robert Leſlie, 1 *t. c.* 884.

C. XIII. He that enteris in ward may not be put to the horn for that cauſe he enteris for.

GIF ony man be chargit to do ony thing, or than to enter his perſoun in ward, and he enter his perſoun in ward, he ſould not be denuncit rebel, and put to the horn; And gif, efter his entering, he be put to the horn for the ſamin cauſe for the quhilk he enterit in ward, he aucht and ſould be relaxit thairfra during the time that he remanis in ward. *Pen. Julij*, 1541, 1 *t. c.* 1063.

C. XIV. Intimatioun of the executioun of the letteris of horning, ſould be maid perſonallie to him quha is chargit thairwith.

LETTERIS of horning beand raiſit and execute aganis ony man, ſould not have executioun, nor the perſoun be denuncit rebel be virtue of the ſamin, except lauchful intimatioun of the executiounis, or, at the leiſt, of ony ane thairof, be maid to him perſonallie aprehendit, and ane authentique copie deliverit to him thairof; utherwayis, gif all the executiounis thairof be maid at his dwelling-place allanerlie, and na intimatioun nor copie thairof maid and gevin to him, the ſamin, with the proceſs of horning, is of nane avail, and aucht and ſould be reducit. 12 *Jan.* 1565, Henrie Douglas *of* Annotraith *contra Priour of* Charterhous, 1 *t. c.* 888.

C. XV. Of him quha is notourlie knawin rebel, and put to the horn.

ANE beand lauchfullie denuncit rébel, and put to the horn, and within ony baronie or ſchirefdome, notourlie repute and haldin as rebel and fugitive, na man dwelland within the ſaid baronie or ſchirefdome can juſtlie pretend ignorance of his denunciatioun to the horn. 29 *Julij*, 1564, Michael Schaw *contra* Michael Herbertſone, 1 *t. c.* 1321.

C. XVI. Na horning ſould be execute aganis the King's ſub-tenentis, bot immediat tenentis allanerlie.

THE King's fewaris of his Hienes's landis, and his immediat tenentis thairof allanerlie, may be denuncit rebellis, and put to the horn, at the King's or his comptroller's inſtance, for not payment of the few-maillis; and na proceſs of horning may be uſit or execute aganis the ſub-tenentis and occupyaris of the ſaidis landis, albeit thair gudis and geir, beand upon the ground of the landis, may be poindit and diſtreinzeit for the ſaidis maillis. 18 *Junij*, 1574, Sibilla Drummond *contra the Comptroller*, 2 *t. c.* 362.

C. XVII. Of twa parties, quhairof the ane is put to the horn, and his eſchete diſponit to the uther.

ANE contract beand maid betwix twa parties, quhairin ather of thame is bund and obliſt to do gude deid and pleaſour to utheris, gif ony of the ſaid parties, efter the dait of the contract, is denuncit rebel, and put to the horn, and his eſchete of his movabill gudis, contractis, obligatiounis, and uther debtis, diſponit to the uther partie contracter; he that is denuncit rebel, and put to the King's horn, has na actioun aganis the uther, for fulfilling his part of the contract, *quia jurium confuſione tollitur obligatio.* 8 *Feb.* 1541, Roſs *of* Craigie *contra* Charterhous *of* Kinfaunis, 1 *t. c.* 538.

C. XVIII. Relaxatioun of horning.

GIF ony man alledgis him to be wrangouſlie denuncit rebel, and put to the King's horn, for non-compeirance befoir the King's Juſtice and his deputis, and deſyris, be way of ſupplicatioun gevin in to the Lordis of ſecrete counſal, in his name and behalf, to be relaxit thairfra; the Lordis may relax him, and give him the wand of peace inſtantlie, or ellis direct letteris to the Schiref of the ſchire, or

or to ony uther of the King's Officiaris, to do the ſamin, he find- and ſufficient cautioun and ſovertie to the Juſtice-clerk to underly the law at ane certane day, under ane certane pane, for ony crime or actioun that may be imputit unto him, or laid to his charge. 26 *Novemb.* 1505, Alexander *Lord* Huntlie, *quha gave in the ſupplicatioun in name of* David Talzeour, 1 *t. c.* 222.

ANE man beand denuncit rebel, and put to the horn, at the inſtance of ony of our ſoverane Lord's lieges, may not be relaxit thairfra, without his conſent, at quhais inſtance he is denuncit, be the King's Hienes, his word or writ: And gif the King, be his writing, letteris, or utherwayis, relaxis him, or diſpenſis with him anent the horning, the ſamin letteris of diſpenſatioun or relaxatioun ar gevin in hinderane of juſtice, and aganis the law of the realme; and he to quhom thay ar grantit, notwithſtanding the ſamin, remanis ſtill under the proceſs of horning. 29 *Julij*, 1566, Marion Montgomerie *contra* Niniane Sempill, 1 *t. c.* 850.

C. XIX. Na man may be relaxit without conſent of partie.

Anent foirfalture.

THE declaratioun of parliament, gif the King's Grace has actioun, or not, aganis the airis of thame that committis leſe-majeſtie. *Vide in antiqua impreſſione, Ja.* V. *fol.* 125. *act.* 38. 7 *Junij*, 1535.

C. I.

ANE tenent or fre-halder, haldand landis of ony perſoun quha is foirfaltit may not be put fra his poſſeſſioun be the King, or his donatar, except he be lauchfullie callit and ordourlie put thairfra. 19 *Decemb.* 1542. 2 *t. c.* 43.

C. II. A ſub-tenent of him quha is foirfaltit ſould be ordourlie callit, and put fra his poſſeſſioun.

GIF ony landis, haldin of our ſoverane Lord in cheif, fallis and becumis in his Hienes's handis be reſſoun of foirfalture, led and deducit for the crime of leſe-majeſtie committit be the proprietar thairof, his Hienes's vaſſal, and the ſamin be diſponit be his Hienes to the ſaid immediat ſuperiour, with this proviſioun, that he ſall enter the ſub-vaſſallis and fré tenentis in thair tenandries, thay payand thair part to him of the compoſitioun quhilk he payit for the haill, efter the rate and quantitie of thair tenandries, he ſould give thame new infeftment, thay payand the rate of the compoſitioun to him thairfoir, for thair part of the ſaid compoſitioun: And gif he and thay cannot agré thairanent, thay aucht and ſould pay na mair for ilk tenandrie than thré zeiris maillis, for thair part of the ſaid compoſitioun. 16 *Mart.* 1540, *The tenentis of* Libertoun *contra Lord* Somerville. 14 *Mart.* 1533, 1 *t. c.* 520.

C. III. Compoſitioun quhilk ſub-tenentis ſould pay to the principal tenent, thair immediat ſuperiour.

GIF ony perſoun committis the crime of leſe-majeſtie or treſſoun, and is foirfaltit thairfoir, all landis haldin of him as ſuperiour, be his vaſſallis, ſub-vaſſallis, or thair fré tenentis, cumis in the King's handis

C. IV. The principal tenent being foirfaltit, the

tenandries pertening to the ſub-tenentis cumis alſwa under foirfalture.

handis be reſſoun of the ſaid foirfalture, be the law and conſuetude of this realme: And gif his Hienes gevis and diſponis the ſaidis landis to ony perſoun, for compoſitioun, or utherwayis, the ſaidis vaſſallis, or ſub-vaſſallis, aucht and ſould be of new infeft be him in thair landis, the quhilk thay hald in cheif of him that is foirfaltit, in the ſamin form and manner as thay wer infeft befoir the ſaid foirfalture, thay payand for the ſaid new infeftment to the maker and gevar thairof thré zeiris maillis of the ſaidis landis. 2 *Mart.* 1540, *Lord* Somerville *contra tenentis of* Libertoun, 2 *t. c.* 28.

C. V. The profitis of foirfaltit landis pertenis to the ſuperiour, until the King preſent a tenent.

GIF ony man, haldand landis of the kirk, or ony uther of the King's lieges, as ſuperiouris, beis convict and foirfaltit for ony crime of leſe-majeſtie committit aganis the King; the proffitis, maillis, and dewties of the ſaidis landis pertenis to the ſaid immediat ſuperiour, fra the time of his foirfalture, ay and quhill the King preſent to the over-lord ane tenent in his place. 17 *Feb.* 1506, *Abbot of* Dumfermling *contra* Duncan Foreſtar, 1 *t. c.* 264.

C. VI. The King is not obliſt to keip ony aſſedatioun ſet be ony perſoun quha thairefter is foirfaltit.

GIF ony perſoun ſet tak and aſſedatioun of ony landis or poſſeſſiounis pertening to him, and befoir the iſche thairof, his landis, gudis and geir cumis in the King's handis be foirfalture, or utherwayis, the King, nor his donatar, is not bund nor obliſt to keip and obſerve the ſaid tak and aſſedatioun, for the termis contenit thairin to rin. *Ult. Maij*, 1540, *M.* James Foulis *contra the tenentis of N.* 2 *t. c.* 8.

C. VII. All tenandries cumis under foirfaltour.

ALL landis and tenandries haldin in cheif of ony man that is foirfaltit, and not lauchfullie confirmit be the King, cumis in his Hienes's handis be reſſoun of foirfalture. 14 *Decemb.* 1570, *et paſſim in regiſtro*, 2 *t. c.* 342.

C. VIII. Of preſentatioun of tenentis to landis cumand under foirfalture.

GIF ony fré tenent, haldand landis of ony ſuperiour under the King, ather ſpiritual or temporal, commit ony crime of treſſoun, and is foirfaltit thairfoir, the King, becauſe he cannot hald landis of ony man, ſould preſent ane tenent to the ſaid immediat overlord, ſpiritual or temporal, of all and haill the landis quhilkis ſumtime pertenit to him that is foirfaltit, and require the ſaid over-lord to give infeftment heritabillie of the ſamin landis to him quha is preſentit; for in ſic caiſis powar and richt of preſentatioun is underſtuid to pertene to his Grace as eſchete, 29 *Mart.* 1561, *Laird of* Ormeſtoun *contra* Laurie Hamiltoun; except the ſaid over-lord be ſpeciallie infeft with fie and foirfalture of his awin tenentis: And the tenent quha is preſentit may obtene a charge, be deliverance of the Lordis of counſal, under the teſtimonial of the greit ſeill, conform to his preſentatioun, and thairwith charge the ſaid over-lord to reſſave him as immediat tenent to him in the ſaidis landis, and infeft him and his airis, be chartour and ſaſine thairintill, to be haldin of the ſaid over-lord als frelie as the ſaid perſoun that is foirfaltit held the ſamin of him of befoir; the quhilk gif the ſaid over-lord refuſis to do, the ſaid tenent may raiſe the remanent preceptis of our ſoverane Lord's chancellarie to charge the ſaid overlord to reſſave him in tenent in maner foirſaid. 1 *Feb.* 1492, *The King*

King contra *the Lord of* Sanctjohne. 17 *Mart.* 1568, *Laird of* Haltoun *contra zoung Laird of* Carmichael, 1 *t. c.* 83.

C. IX. Anent preceptis of *clarè conſtat*, gevin be the ſupetiour, without the King's licence.

DOME and ſentence of foirfalture being gevin and pronuncit aganis ony perſoun for leſe-majeſtie committit be him, the ſuperiour may on na wayis, without the King's licence or preſentatioun, give ſaſine be *clarè conſtat*, or utherwayis, of ony landis quhilkis pertenit to the ſaid perſoun the time of the foirfalture, to ony perſoun, as air and ſucceſſour to him, or to ony of his predeceſſouris: And gif he dois in the contrare, the ſamin ſaſine, with the poſſeſſioun, and all uther thingis that followis thairupon, requiris na reductioun, bot is null and of nane avail, be way of exceptioun. 18 *Jan.* 1564, *M.* Patrik Biſſet *contra* Margaret *and* Elizabeth Biſſettis, 1 *t. c.* 891.

C. X. All diſpoſitiounis maid be the felon efter the committing of the crime, is of nane avail.

GIF ony perſoun committis treſſoun or leſe-majeſtie, and ſummoundis be raiſit thairfoir aganis him, at the King's inſtance; all alienatiounis and diſpoſitiounis of his landis, gudis or geir, maid be him, togidder with all infeftmentis thairof, obtenit be quhatſumever perſoun, efter the executioun of the ſaidis ſummoundis, and for ony cauſe followand the committing of the ſaid crime of treſſoun, is of nane avail, and aucht and ſould be reducit at the King's inſtance; becauſe all and haill the landis, gudis and geir, movabill and immovabill, quhilkis pertenit to him quha committit the treſſoun in the ſelf ſamin time of the committing thairof, pertenit to our ſoverane Lord, as ane part and pertinent of the patrimonie of his crown; and thairfoir, without his conſent, may not be diſponit or occupyit be ony perſoun. 15 *Feb.* 1559, James Stewart *contra the Quene and hir comptroller*, 1 *t. c.* 776.

C. XI. Of treſſoun committit efter ſpuilzie perſewit befoir the treſſoun.

GIF ony perſoun committis ſpuilzie, or dois ony deid hurtful or prejudicial to ane uther, and thairefter committis the crime of leſe-majeſtie or treſſoun aganis the King's Hienes; and the perſoun quha is hurt be the ſaid ſpuilzie, or uther deid, callis and perſewis the doar and committar thairof, and obtenis decrete aganis him thairupon, be virtue quhairof he cauſis ſeik his movabill gudis, to poind and diſtreinzie thame thairfoir; and, becauſe nane can be apprehendit, he cauſis denunce his landis to be compriſit for executioun of the ſaid decrete, and lauchfullie compriſis the ſamin befoir the executioun of ony ſummoundis of treſſoun intentit at the King's inſtance aganis the committar of the ſaid ſpuilzie or deid, the ſamin executioun and compriſing is ſufficient, togidder with all chartouris, infeftmentis and ſaſines followand thairupon, albeit the ſamin be gevin and maid efter the intenting and executioun of the ſaidis ſummoundis of treſſoun; becauſe the landis being lauchfullie compriſit befoir the executioun of the ſaid ſummoundis of treſſoun, as ſaid is, the awner of the ſamin, committar of the ſaid treſſoun, was denudit of the richt and propertie thairof; and ſwa the infeftment followand thairupon, as upon the ground richt of the compriſing and aſſignatioun, is gude and valid in the ſelf, and may on na wayis be reducit and annullit at the King's inſtance; becauſe the ſpuilzie, or uther deid beand done befoir the committing of the ſaid treſſoun, and the decrete thairanent obtenit befoir the executioun

oun of the ſummoundis of treſſoun, ſould be principallie reſpectit and conſiderit; *quia unius-cujuſque origo eſt primùm inſpicienda.* 16 *Feb.* 1559, Johne Steuart *contra the Quene and hir Comptroller*, 1 *t. c.* 777.

C. XII. Diſpoſitioun of landis maid be the huſband to the wife.

GIF the husband gevis and diſponis to his wife ony landis or annualrentis, in conjunct-fie, or utherwayis, and thairefter hir ſaid husband happinis to be foirfaltit for ony crimes committit be him; gif the ſaid wife has not obtenit confirmatioun of the ſuperiour upon the ſaid gift and diſpoſitioun maid to hir, the ſamin landis or annualrentis cumis and fallis under foirfaltour, as gif thay had never bene diſponit. 9 *Novemb.* —— Johne *Lord* Borthwick *contra* Marjorie —— *ſpouſe to umquhile the Lord* Creichtoun, 1 *t. c.* 44.

C. XIII. Reſtitutioun requiris a ſpecial declaratioun.

GIF ony perſoun beis foirfaltit for treſſoun, and his landis and heritage diſponit be the King to ony perſoun or perſounis, albeit he be reſtorit thairefter to all his landis, honouris, gudis and geir, zit nevertheles he ſould perſew befoir the Lordis for the particular reductioun of all and ſindrie the infeftmentis of his landis, maid and gevin efter his foirfaltour be the King, to ony perſoun; as did the *Lord* Glamis, 25 *Junij*, 1543. *Sir* James Hamiltoun, 15, 16 *Jan.* 1545. *The Erle of* Angus, 19 *Julij*, 1546. Becauſe, gif landis cum in the King's handis be foirfalture, ar diſponit efterwart be his Hienes to ony perſoun, thay may be bruikit and joiſit be him to quhom thay wer diſponit, efter the reductioun of the foirfalture, ay and quhill ſpecial declaratioun of ane Judge paſs conform to the reductioun. 20 *Junij*, 1541, Hoppringill *contra* Ker, 1 *t.* f. 1397.

C. XIV. The principal tenent beand reſtorit, the ſub-tenentis ſould be put in thair awin place.

LIKE as ane beand foirfaltit, all his ſub-tenentis cumis under foirfaltour; ſwa he beand reſtorit, all his fré tenentis aucht and ſould be reponit in thair awin place, in the quhilk thay wer befoir the geving of the dome of foirfalture; and na pactioun or appointment maid betwix him quha is reſtorit, and the King's Grace, concerning thair tenandries, without thair conſent, may be hurtful or prejudicial to thame anent thair reſtitutioun. 20 *Mart.* 1543, *Sir* John Cambell *contra Laird of* Grange, 2 *t. c.* 161.

Anent curſing.

C. I. LETTERIS of captioun ſould be direct aganis thame quha ſuſtenis curſing be the ſpace of fourtie dayis. *Stat.* 2. *Ro. Bruce*, *c.* 31. *Ro.* III. *c.* 7. And alſwa of four formis and horning. *Ja.* V. *fol.* 118. *act.* 9. *fol.* 125. *act.* 37. 7 *Junij*, 1535.

C. II. ALL the gudis movabill of thame quha ſuſtenis the proces of curſing for ane zeir, or communicatis being excommunicat, ſall pertene to the King, the creditour being firſt ſatisfyit. *Mar. R. fol.* 147. *act.* 6. 19 *Maij*, 1551.

Ex-

EXCOMMUNICAT perſounis ſould be denuncit rebellis. *Ja.* VI. *fol.* 2. *act.* 2. 26 *Jan.* 1573. C. III.

CURSIT perſounis ſould not remane within the kirk in time of divine ſervice. *Mar. Reg. fol.* 154. *act.* 18, & 19. 1 *Feb.* 1551. C. IV.

GIF ony Schiref, principal or depute, his Officiaris, Serjandis, or ſervitouris, quha paſſis for poinding and diſtreinzieing of ony perſoun, his landis and gudis, for ony unlaw or debt aucht be him to the King, happinis to be wrangouſlie or inordourlie curſit be ony Biſchop or eccleſiaſtical perſoun, the King, or Lordis of his counſal, may tak cognitioun thairanent; and for the contemptioun, lichtlieing, derogatioun, and greit injurie done to the King's authoritie royal, in leiding of the ſaid proceſs of curſing aganis the ſaid Officiar in executioun of his Office, the ſaid Biſchop, or uther eccleſiaſtical perſoun, may be correctit and puniſcht be the King's Hienes, that the ſamin may be ane exempill to utheris to abſtene fra all ſic doingis in time to cum. 8 *Julij*, 1484, *The King* contra *the Biſchop of* Galloway. 4 *Decemb.* 1500, *The Lordis of counſal* contra *the Judges ſubdelegat be the Pape, betwix the Abbot of* Lundoris *and N.* Newburgh, 1 *t. c.* 67. C. V. Of ane perſoun quha is wrangouſlie curſit.

Anent the Juſtice air.

JUSTICE generallis to be maid. *Ja.* III. *fol.* 74. *act.* 117. 1 *Octob.* 1487. C. I.

JUSTICE airis in *Argile*, and uther hie-land places, and to quhat court or air thay ſould cum. *Ja.* IV. *fol.* 102. *act.* 93. 11 *Mart.* 1503. C. II.

IT is ſtatute and ordanit, that the Juſtice general ſall have for his fie and ſuſtentatioun for ilk day of the air, five pundis; and his Clerk ſall have ij. *s.* of ilk perſoun that is amerciat and fylit. *Item*, The Juſtice-clerk ſall have for ilk perſoun that is clengit be ane aſſiſe, for to draw him furth of the rollis, iiij. *d. Mal. Mack. c.* 4. And he ſall have for ilk Actornay and commiſſioun, ij. *s.* For ilk man that ſchewis ane remiſſioun, ij. *s.* For ilk letter of witneſſis, vi. *s.* viij. *d.* For ilk precept or ſummoundis upon the breve of mortanceſtrie, diſſaſine, or perambulatioun, vi. *s.* viij. *d. Iter. Juſtic. c.* 12. C. III. The Juſtice general and his deputis feis.

THE Lordis of counſal underſtanding that in times bypaſt particular dietis of juſtice courtis has bene ſa frequentit, and oft uſit, within this realme, quhilk has bene tedious, noyſom, and ſumptuous, to all our ſoverane Lord's lieges, throw arreiſting, ſummounding, and convening of thame in greit nombre, out of far partis of this realme, thairfoir, for eſchewing of ſic inconvenientis, ſwa that our ſoverane Lord's lieges be not put to fruſtrat labour, buſineſs and expenſis, throw colour of ſic particular juſtice courtis, in time cuming, ordanis, that na particular courtis or juſtice dietis be ſet, affixt C. IV. Of ſitting of Juſtice courtis.

ſixt, or haldin within this realme, for ony alledgit oppreſſioun or crimes committit or done, be ony maner of perſoun or perſounis, in time cuming, without deſire of the Theſaurar, and advice of the Lordis of counſal in that behalf. 16 *Novemb.* 1537. 11. *c.* 489.

C. V. JUSTICE clerk ſould not reveil the dittay, nor alter the rollis. *Ja.* II. *fol.* 30. *act.* 28. 19 *Jan.* 1449.

C. VI. The Coroner's office and fie. THE Coroner has powar to arreiſt all perſounis indytit at his awin pleaſour, at ony time in the zeir, als weill befoir the proclamatioun of the Juſtice air, as efter the ſamin. *Pag.* 836. *Ex lib. Sconen.*

Item, Na Coroner has powar to mak attachiamentis, for complaintis and dittay gevin up be ony perſoun, for woundis, ſtraikis, or tuilzieing, except he quha compeiris to perſew alledge the King's peace to be brokin thairby; the quhilk gif he alledgis not, it pertenis to the Schiref to mak attachiament for the ſaidis crimes. *LL. Mal. Mack. c.* 3.

Item, Gif the perſoun indytit may not be fund the time of the making of the attachiament, the Coroner ſall remane at his houſe, or dwelling-place, be the ſpace of ane day and ane nicht, and ſall have in the mene time reſſonabill expenſis and ſuſtentatioun to himſelf, to twa ſervandis, to twa witneſſis brocht with thame, and to his Clerk ij. *s.* and na mair: And gif he may not find the perſoun indytit, he ſould arreiſt all his gudis, movabill and unmovabill, under ſure pledges, to be furthcumand to the Juſtice. *LL. Mal. Mack. c.* 4.

Item, The Coroner ſall have for his fie, for ilk man unlawit and fylit, ane colpindach, or then xxx. *d.* Bot he ſall have nathing for him that is clengit be ane aſſiſe; and for ane man condemnit to the deith befoir the Juſtice, the Coroner ſall have all his tame and dantounit horſis, quhilk ar not ſchod with ſchoon, all his ſcheip beand within the nombre of twentie, all his gait and ſwine within the nombre of ten, all his cornis beand in brockin ſtakkis, beand in the barn unthreſhin in mowis, or threſhin, lyand in heipis and bingis, togidder with all the inſicht, beand within the inner part of his houſe, *viz.* within the cruik hingand over the fire. *Ibid.*

THE Coroner may arreiſt, at all times, als weill befoir as efter the cry of the air, all thame that ſall be gevin to him in porteous be the Juſtice-clerk, and nane utheris. *Ja.* I. *fol.* 24. *act.* 156. 22 *Octob.* 1436.

C. VII. OF arreiſting of michtie and diſobedient perſounis to the Juſtice air. *Ja.* III. *fol.* 75. *act.* 116.

C. VIII. THE Coroner may arreiſt fugitives at thair dwelling-places, and the paroch kirk. *Ja.* III. *fol.* 127. *act.* 36. 7 *Junij*, 1535.

C. IX. ANENT keiping of arreiſtit treſpaſſouris. *Ja.* III. *fol.* 75. *act.* 121. 1 *Octob.* 1487.

C. X. THAT the Juſtice, Chalmerlane, Coroneris, and all uther Officiaris,

ciaris, ride in competent and eaſie nombre. *Ja.* II. *fol.* 29. 19 *Jan.* 1449.

C. XI. THE Coroner may not intromit with gudis of men convict without the Schiref's conſent. *Ja.* III. *fol.* 76. *act.* 122. 1 *Octob.* 1487.

C. XII. IT is ſtatute and ordanit, that thair be ane Juſtice air als weill on the ſouth-ſide as on the north-ſide of *Forth*. *Stat. Rob.* III. *Ex lib. Scon. Quon. attach. c.* 77. *Aſſiſ. Reg. Da. c.* 18.

C. XIII. JUSTICE airis ſould be haldin twiſe in the zeir, within the royaltie and regalitie, *Ja.* II *fol.* 26 *act.* 5. 2 *Aug.* 1445. *Ja.* VI. *P.* 14. *c.* 227. anis on the graſs, and anis on the corn. *Ja.* III. *fol.* 60. *act.* 76. 20 *Novemb.* 1475. *Ja.* IV. *fol.* 92. *act.* 51. 18 *Maij*, 1491.

C. XIV. The maner of the taking up of dittay. THE Juſtice general, and his deputis, beand of purpois and mind to hald ane Juſtice air within ony of the King's ſchiriefdomes, ſould direct his precept or breve to the Schiref, or his deputis, chargeand and commandand the Schiref, that for ſa mekil as the King's dittay is to be takin up in his haill ſchiriefdome and juriſdictioun, to be preſentit in ane Juſtice air, to be haldin at ſic a place within the ſaid ſchiriefdome, and ſic ane day, that he lauchfullie cauſe ſummound, befoir ſufficient witneſſis, of ilk baronie, xij. or xv. men, maiſt convenient, for the effect under-written; and of ilk village or tenandrie, iiij. or vj. men; and of ilk burgh, xij. or xvj. burgeſſis, efter the diſtance of the place, and the nombre of the perſounis within the burgh, togidder with ane Serjand, ane Smith, ane Miller, ane Brouſter, and ane Sutar, of ilk baronie, village or tenandrie, to compeir befoir the Juſtice-clerkis, ane or ma, the ſaidis day and place, with continuatioun of dayis, to give up the King's dittay, and to do thairanent all and ſindrie thingis requirit be the law; and alſwa chargeand the ſaid Schiref, and his Serjandis, to be thair preſent in like maner, at the ſamin time, havand ſufficient teſtimonie and record of the charge and ſummoundis execute aganis the perſounis foirſaidis; and alſwa that he provide for the expenſis of the ſaidis Clerkis; the quhilk ſall be allowit in the firſt compt to be maid thairefter be him at the iſche of the Juſtice air. *Iter. Juſt. c.* 3.

C. XV. THE maner of attachiamentis. *Stat. Alex. c.* 21. *anno* 1244.

C. XVI. Certane punctis of dittay. IN the firſt, the four punctis of the crown, *viz.* raviſching and deforcement of women; reif; fire; and murther.

Item, Man-ſlauchter.

Item, Foir-thocht felonie.

Item, Mure-burn in unlauchful time, efter *Marche*.

Item, Slauchter of reid fiſch in cloſs time.

Item, Breking of orchardis and dowcattis.

Item, Recept of thift.

Item, Out-putting and in-putting of merchis with *Engliſhmen*.

Item,

Item, Tratourie and treſſoun aganis the King and the realme. *Iter. Juſtic. c.* 13.

Upon thame that burnis ony muiris efter the month of *Marche*. *Ja.* I. *fol.* 5. *act.* 22. 26 *Maij*, 1424. *Ja.* II. *fol.* 45. *act.* 101. 6 *Mart.* 1457, *&* *fol.* 64. *act.* 94. 6 *Aug.* 1477. *Ja.* IV. *fol.* 98. *act.* 79. 26 *Junij*, 1493.

Upon ſtealeris of grene wod, of frute, cunningis, peilleris of trees, brekaris of orchardis, and deſtroyeris of woddis. *Ja.* I. *fol.* 6. *act.* 36. 10 *Mart.* 1424.

Upon ſlayeris of hartis in time of ſnaw, and deſtroyeris of cuningis. *Ja.* II. *fol.* 45. *act.* 99. 6 *Mart.* 1457.

Upon ſlayeris of daes, raes, and deer, in time of ſtorm or ſnaw, hunteris, ſchuiteris or ſlayeris of deere or raes in uther men's parkis, takeris of cuningis furth of cuningeris, or dowis furth of dowcottis, or fiſch out of pondis or ſtankis. *Ja.* III. *fol.* 59. *act.* 73. 19 *Maij*, 1474. *Ja.* V. *fol.* 119. *act.* 13, 14, 15. 7 *Junij*, 1535. *Mar. R. fol.* 156. *act.* 29. *&* 30. 1 *Feb.* 1551.

Upon ſlayeris of ſalmond, reid fiſch, *&c.* in forbidden time. *Ja.* I. *fol.* 4. *act.* 11. *&* *fol.* 6. *act.* 38. 12 *Mart.* 1424. *Ja.* II. *fol.* 28. *act.* 9. 20 *Jan.* 1448. *Ja.* V. *fol.* 120. *act.* 17. 7 *Junij*, 1535.

Upon ſtealleris and ſlayeris of hart, hynd, dae, rae, and deir. *Ja.* I. *fol.* 7. *act.* 39. 12 *Mart.* 1424.

Upon ſlayeris of pertrickis, pluveris, blak cockis, gray hennis, and mure cockis. *Ja.* I. *fol.* 19. *act.* 122. 12 *Julij*, 1428. *Ja.* III. *fol.* 59. *act.* 73. *&* 74. 9 *Maij*, 1474.

Upon uſeris of wrang meſouris. *Ja.* II. *fol.* 42. *act.* 82. 6 *Mart.* 1457.

Upon ſlayeris of reid fiſch in forbidden time. *Ja.* II. *fol.* 44. *act.* 96. 6 *Mart.* 1457.

Upon careyaris of money furth of the realme. *Ja.* III. *fol.* 47. *act.* 10. 9 *Octob.* 1466.

Upon keiparis of cruives and zairis. *Ja.* III. *fol.* 63. *act.* 92. 6 *Aug.* 1477. *Ja.* IV. *fol.* 87. *act.* 32. 15 *Feb.* 1489. *Ja.* V. *fol.* 120. *act.* 18. 7 *Junij*, 1535.

Upon ferryaris takand over-mekil fraucht. *Ja.* III. *fol.* 63. *act.* 93. 6 *Aug.* 1477. *&* *fol.* 83. *act.* 112. 24 *Feb.* 1483. *Ja.* IV. *fol.* 87. *act.* 31. 15 *Feb.* 1489.

Makeris and uſeris of ane wrang bind of ſalmond. *Ja.* III. *fol.* 64. *act.* 95. 6 *Aug.* 1477.

Upon ſorneris, and maiſterful beggaris. *Ja.* III. *ibid. act.* 96. *Ja.* V. *fol.* 121. *act.* 24. 7 *Junij*, 1455.

Takeris and intromettouris with kirk landis, teindis, obligatiounis, profitis, dewties of the kirk, without tak or conſent of the perſoun, or uther awneris. *Ja.* IV. *fol.* 84. *act.* 19. 15 *Feb.* 1499.

Dittay ſould be takin up, upon the Schiref's not deſtroying cruives and zairis, and on millaris quha ſettis creillis and nettis in dammis. *Ja.* IV. *fol.* 87. *act.* 32. 15 *Feb.* 1489.

Upon takeris of caupis in *Galloway* and *Carrick*. *Ja.* IV. *fol.* 88. *&* 89. *act.* 35. *&* 36. 15 *Feb.* 1489.

Upon all the lieges quha, beand requirit, aſſiſtis not the Juſtice in his airis. *Ja.* IV. *fol.* 92. *act.* 51. 18 *Maij*, 1491.

Upon

Upon burgeſſis makand convocatioun without command of thair Officiar, or makand bandis, or rydand in feir of weir with ony man, except the King, and thair awin Officiaris, or oppreſſing thair nichtbouris, or diſobedient to thair Officiaris. *Ja.* IV. *fol.* 93. *act.* 57. 18 *Maij*, 1491.

Upon craftiſmen takand cuſtume fra uther craftiſmen. *Ja.* IV. *fol.* 97. *act.* 74. 26 *Junij*, 1493.

Upon craftiſmen takand fie for haly-dayis, and beginand anc work, and not ſufferand ane uther to end it. *Ja.* IV. *ibid. act.* 75.

Cuſtumeris takand mair cuſtume than is leaſum of the law. *Ja.* IV. *ibid. act.* 78.

Upon uſeris of fals weichtis and meſouris. *Ja.* IV. *ibid.*

Upon cowparis quha makis wrang bind and meſour of ſalmond. *Ja.* IV. *fol.* 100. *act.* 84. 13 *Junij*, 1496.

Upon troubleris of Magiſtratis within burgh, uſand thair privilege. *Ja.* V. *fol.* 123. *act.* 30. 7 *Junij*, 1535.

Upon all Judges and Officiaris quha dois not diligence to ſearch and apprehend rebellis. *Ja.* V. *fol.* 135. *act.* 76. 14 *Mart.* 1540.

Upon wilful receiptaris, ſupplieris, mantenaris, defendaris, and favoreris of rebellis. *Ibid.*

Upon ſlayeris of blak fiſch, ſmoltis, cutteris of grene wod. *Ja.* VI. *fol.* 21. *act.* 38. 15 *Decemb.* 1567. & *fol.* 10. *act.* 15. 24 *Octob.* 1581.

Upon Erlis, Lordis, Baronis, als weill within regalitie as royaltie, and Officiaris within burgh, that executis not the actis maid anent the prices of victual, and all ſtuff. *Ja.* VI. *fol.* 19. *act.* 28. 24 *Octob.* 1581.

Upon halderis of horſe at hard meit in forbidden time. *Ja.* VI. *ibid. act.* 29.

Troubleris of the kirk, raiſeris of tumult or effray in the kirk or kirk-zaird in the time of divine ſervice. *Ja.* VI. *P.* 11, *act.* 27.

Upon Officiaris of armis, quha alteris, or puttis out or in the namis of the perſounis ſummoundit be thame. *Ja.* VI. *P.* 11. *c.* 88.

Upon takeris up and payeris of blak maill. *Ja.* VI. *P.* 11. *c.* 102.

Upon *Scottiſh* bordoureris marieand *Engliſh* women bordoureris. *Ja.* VI. *P.* 11. *c.* 104.

Upon ſlayeris of wild fowlis and beiſtis within the King's woddis, or cutteris of timber or grene wod. *Ja.* VI. *P.* 14. *c.* 210.

Upon malt-makeris not preſentand the malt to the mercat, and ſelland the ſamin befoir nine houris, and takand mair nor ane boll of beir for making of the chalder of malt. *Ja.* IV. *fol.* 107. *act.* 126. 11 *Mart.* 1503.

C. XVII. THAT the Juſtice-clerk tak furth all the ſtatutes that has pane of dittay. *Ja.* IV. *fol.* 97. *act.* 77. 26 *Junij*, 1493.

C. XVIII. THAT na perſounis that indictis men to the Juſtice-air, be on thair aſſiſe. *Ja.* I. *fol.* 9. *act.* 56. 11 *Mart.* 1425.

C. XIX. The cauſe of dittay ſould HE quha attachis or ſummoundis ony perſoun that is indytit, ſould not ſchew him the cauſe of his dittay, the quhilk on na wayis ſould

not be ſchawin.

ſould be declarit or contenit in the roll of dittay, ſummoundis or attachiament. *Aſſiſ. Reg. Da. c. 6. Stat. Will. c. 7. Leg. foreſt. c. 53.*

C. XX. The cry of dittay, and proclamatioun of the air.

IT is to wit, that the dittay ſould be cryit upon twentie dayis warning, or mair, and thairefter the air ſould be ſet and proclamit, ſwa that betwix the day of the crying of the dittay, and the crying of the air, ſall be fourtie dayis at the leiſt, that the perſounis quha ar indytit may be lauchfullie arreiſtit, and brevis and ſummoundis raiſit in dew time, *Iter. Juſtit. c. 2.* And all perſounis that ar indytit ſould have the ſpace of twentie dayis at the leiſt to anſwer in the Juſtice air, *Quon. attach. c. 78. Aſſiſ. Reg. Da. c. 19.* For gif thay be not ſummoundit on fourtie dayis warning, the ſamin is of nane avail; bot it is neidful to ſummound thame to ane langer day. *Iter. Juſtic. c. 11.*

C. XXI. Quha ſould compeir at the Juſtice air.

ALL Biſchoppis, Abbotis, Priouris, Erlis, Baronis, Knichtis, and frehalderis, beand ſummoundit and chargit be the King and his Juſtice, at haldin to compeir in all Juſtice airis, to aſſiſt and give thair counſall to the King's Juſtice in ſic doubtis and contraverſies as ſall happin thair to ariſe: And gif the ſaidis perſounis, beand requirit, failzies to compeir, thay ſall thairthrow incur the King's unlaw; bot it is not requirit that the King be thair preſent in proper perſoun. *Quon. attach. c. 78. Lib. 4. c. 89. c. 19. Stat. Will. c. 4. Aſſiſ. Reg. Da. c. 19. c. 18. De jud. c. 60. Quon. attach. c. 77.*

C. XXII. Thay quha ſould compeir in the Juſtice air ſould be ſummoundit thairto.

THE Juſtice-general, being purpoſit to hald ane Juſtice air within ony ſchirefdome, ſould direct his precept and ſummoundis to the Schiref, and his deputis, chargeand and commandand thame to cauſe lauchfullie ſummound and charge all Biſchoppis, Abbotis, Priouris, Erlis, and utheris frehalderis within the ſchirefdome, that ſould be gevin up, togidder with all perſounis that aw allanerlie preſence, and haldis of our ſoverane Lord the King in cheif, to compeir befoir the Juſtice, or his deputis, ane or ma, at ane certane day and place, with continuatioun of dayis, to do and underly that quhilk of the law thay aucht and ſould do. *Item*, The Schiref, and his deputis, at the command of the Juſtice, ſould in like maner warn and charge all perſounis indytit, baith of auld to ony uther Juſtice air, and of new to the air to be haldin, togidder with thair pledgis quha compeirit not, and did not underly the law of befoir. *Item*, The Schiref, beand commandit, as ſaid is, ſould ſummound and charge all perſounis quha ſould perlew or defend in the ſaid Juſtice air to be haldin, to compeir and to do all quhilk thay aucht and ſould do of the law. *Item*, The Schiref, and his deputis, ſould be preſent at the Juſtice air, with ſufficient witneſſis, for preiving of the executioun of the Juſtice's precept direct to him to the effect foirſaid. *Item*, The Schiref ſould provide for the Juſtice and his Clerk's reſſonabill expenſis induring the time of the air, the quhilk ſall be allowit to him in his firſt comptis to be maid be him of the iſſues of the Juſtice air. *Iter. Juſtic. c. 4.*

C. XXIII. Of preſence to be gevin

ALL immediat and principal tenentis to the King's Grace, hald- and landis of him in blanche ferm, or utherwayis, aucht and ſould give

give preſence perſonallie thairfoir in the Juſtice air, except thay be exemit and fré thairfra, be ſpecial privilege of thair infeftment; bot thair fré tenentis haldand of thame the ſamin landis, or ony part thairof, aucht not to give ony preſence for the ſamin. 11 *Julij*, 1527, 1 *t. c.* 304. be the frehalderis in Juſtice airis.

GIF ony man, indytit to the Juſtice air to underly the law, is fugitive, and enteris not to the law, and his ſovertie and cautioun beis unlawit thairfoir, he aucht to be releivit be the heidiſmen or maſteris to quhom the ſaidis fugitives pertenis, and wer men to, and under quhom thay dwelt, ilk ane for thair awin part; becauſe thay enterit not thair men, and tenentis of thair landis. 6 *Mart.* 1506, Johne Carrutheris *contra* John Maxwell, 1 *t. f.* 255. C. XXIV. Releif of him quha is ſovertie for ane fugitive.

INPRIMIS, The ſuitis ſould be anes callit, with thair Lordis; for albeit the ſuiteris compeir, nevertheleſs thair Lordis alſwa ar haldin to compeir befoir the Juſtice in his air; bot thay ſould be ſummoundit be ane Serjand at thair dwelling-places befoir lauchful witneſſis; for gif the executioun of the ſummoundis is not ſufficientlie provin, the Serjand ſould be unlawit; and he quha ſould have been ſummoundit, ſall be quite and fré; thairefter the Juſtice's commiſſioun and powar ſould be ſchawin and red; the court ſould be lauchfullie affirmit and fenſit; the Dempſtar ſould be choſin and ſworn; then the ſuitis ſould be callit the ſecund time, togidder with thair Lordis, ilk with thair awin ſuite; and ilk ane of the ſuiteris and Lordis ſould be callit twiſe: and gif ony ſuiter's over-lord be abſent, he ſall be decernit to be in ane unlaw; and gif thay be baith abſent, thay ſall be adjudgit in ane unlaw, ilk ane be thameſelfis: Thairefter the Schiref ſall preſent the Juſtice's breve direct to him, and ſall cauſe the ſamin be red, and the executioun thairof ſufficientlie provin be witneſſis; the quhilk beand done, the Juſtice ſould cauſe call the brevis and parties quha will perſew or defend, and cauſe the executioun thairof be ſufficientlie provin; then ane aſſiſe ſould be choſin, of the beſt of the countrey, quha will ſweir the greit aith, that thay ſall ſoothſay, and na ſooth conceale, in ſa far as thay knaw. Thairefter the Coroner ſould be callit, and the dittay ſould be preſentit and reſſavit, and the perſounis indytit ſould be accuſit; quha compeirand, ſould be preſentit to the court, and to the Schiref; for he is haldin to anſwer for thame untill juſtice be done to thame. Quhen the perſounis indytit ar preſentit, the auld dittay rollis ſould be buikit, and thay accuſit conform thairto: And gif thair be na particular cauſe of dittay, thay may be accuſit for commoun and general cauſis. *Iter. Juſtic. c.* 10, 11, 13. C. XXV. The maner of the halding of the Juſtice air.

GIF thair be ony perſounis that has regalitie, thay may deſire ony perſoun indytit to be repledgit to thair awin court, the quhilk thay may do be thameſelfis, or be thair Procuratour, ſchewand his commiſſioun, and payand thairfoir, and leivand behind him cautioun of colerach for juſtice to be done: Bot the Juſtice and his deputis ſould bewar that na perſoun be repledgit be reſſoun of regalitie, thairby to eſchew and eſcaip fra the law: And alſwa, that he be not begylit be ony perſoun alledgeand him to have regalitie quha has nane, *Iter. Juſtic. c.* 11. And ſiclike, gif ony burges beand in- C. XXVI. Regalitie, burgeſſis and kirkmen.

indytit, and compeirand in judgment, alledgis his awin libertie and privilege, he ſould be remitted to his awin burgh, thair to anſwer as law will. *Item*, Gif ony Clerk or eccleſiaſtical perſoun is indytit, and compeiris, he may be repledgit and deliverit to his Biſchop, under ſicker and ſure pledges, and his accuſatioun and dittay ſould be ſchawin and declarit be the Juſtice, under his ſeill, to the Biſchop, to the effect he may be callit and perſewit thairfoir. *Leg. port. c. 353. Lib. Commiſſ.*

C. XXVII. Anent admiſſioun of reſpeitis in Juſtice airis.

ITEM, Gif ony perſoun has ane reſpeit grantit to him be the King, he may preſent the ſamin be himſelf, or his Procuratour, and deſire it to be admittit; bot na reſpeit ſould be admittit in favouris of ony perſoun quha has fund ſicker and ſure borghis to compeir and anſwer at the inſtance of ony perſoun; becauſe, albeit the King may reſpeit his awin cauſe, nevertheleſs he may not hurt nor prejudge ony partie anent his richt and civil actioun. *Iter. Juſtic. c.* II.

C. XXVIII. Anent remiſſiounis in Juſtice airis.

ITEM, Gif ony perſoun, indytit and accuſit, pretendis and alledgis ane remiſſioun, he ſould exhibite and produce the ſamin; and albeit the remiſſioun be general, zit gif he quha uſis the ſamin, deny ony point of crime quhairof he is indytit and accuſit be the rollis, or at the inſtance of ony partie, he ſall ſuffer and underly ane aſſiſe thairfoir; and he quha producis and uſis ane remiſſioun, ſould deny nathing laid to his charge, alwayis he ſould inſtantlie preive, gif he be accuſit for ſlauchter, that he offerit amendis and aſſythment to the narreſt kinniſmen of him quha is ſlane; and being accuſit for ony uther crime, he ſould in like maner preive that he offerit ſatisfactioun to him quha ſufferit the damnage and skaith, efter the qualitie and quantitie of the crime; the quhilk gif he preivis, he ſould find ſufficient ſovertie befoir the Juſtice that he ſall do and perform his foirſaid offer: And gif he failzie to find the ſaid pledges, his remiſſioun ſall be of nane avail to him, and he ſall underly the law notwithſtanding the ſamin. *Iter. Juſtic. c.* II.

C. XXIX. The ſecund day of the Juſtice air is peremptour.

ITEM, It is ſtatute and ordanit, for ſchortneſs of proceſs, and expeditioun of juſtice to be done in the Juſtice air, in the quhilk the feird day was peremptour in auld times, that in all time cuming all actiounis and cauſis perſewit befoir the Juſtice in his air, the ſecund day of the air, or ſecund court, ſall be ane term peremptour, or laſt term of compeirance to the partie indytit, ſwa that he quha is contumax in the ſecund court may be denuncit rebel, or utherwayis demanit, as was uſit and wont to be done in the feird court in auld times, *Stat. Rob.* III. *ex lib. Scon.* And thairefter, gif he quha is indytit is abſent at the firſt and ſecund courtis, the dome ſall be gevin, that ſic ane man is in ane unlaw, and at the King's horn, and his landis and gudis eſchete to the King, except he cum within fourtie dayis, and underly the law, and at that time he ſall pay xx. *lib.* quhairas in default of compeirance in the firſt court, he payit bot x. *lib.* And the ſamin day the Juſtice ſall cauſe denunce him rebel at the mercat croſs, and cauſe blaw thriſe ane blawing horn on him be ane Officiar, opinlie declarand the dome foirſaid gevin in court aganis him. *Iter. Juſt. c.* 13. *Ja.* V. *fol.* 124. *act.* 36. 7 *Junij*, 1535.

C. XXX. Juſtice airis in regalitie.

IT is ſtatute and ordanit, that Lordis of regalitie ſall hald thair Juſtice airis twiſe in the zeir, and ſall abridge the form of the proceſs, in the ſamin maner as is abone expremit in the King's Juſtice air. *Stat. Rob.* III. *ex lib. Scon.*

C. XXXI. The Juſtice ſould accuſe the Schiref, and uther Officiaris.

IT is ſtatute and ordanit, that the Juſtice ſall accuſe in his Juſtice air, the Schiref, and utheris the King's Officiaris. *Stat. Ro.* III. *ex lib. Scon.*

C. XXXII.

THE Schiref and the Coroner ſould thole ane aſſiſe the laſt day of the air. *Ja.* III. *fol.* 76. *act.* 123. 1 *Octob.* 1487.

C. XXXIII.

OF the Juſtice airis of *Ergile*, *Lorn*, *Bute*, and thay partis. *Ja.* IV. *fol.* 102. *act.* 94. 11 *Mart.* 1503.

C. XXXIV. The unlaw in the Juſtice air.

The unlaw or amerciament befoir the Juſtice in his Juſtice air, on the north-ſide of the water of *Forth*, is aucht ky, and ane colpindach to the Coroner, and twa ky to the Juſtice-clerk; and the unlaw befoir the Juſtice in his air bezond the water of *Forth*, on the ſouth-ſide thairof, as in *Louthiane*, and in the partis betwix the water of *Tyne* and *Forth*, is x. *lib.* and ane colpindach, or xxx. *d.* to the Coroner. *LL. Mal. Mack. c.* 4.

C. XXXV. How the unlaw ſould be up-takin and ſpendit.

THE Juſtice air beand indytit, the Juſtice ſould direct his precept to the Schiref and his deputis, chargeand him, for ſa mekil as divers and ſindrie perſounis wer adjudgit in ane unlaw, or convict for thair treſpaſs, or cum in the Juſtice's will, that the Schiref ſould paſs, tak, and uplift fra ilk perſoun ſic certane ſowmis as the Juſtice gevis him in bill, and to poind and diſtreinzie thairfoir; the quhilk beand tane up be the Schiref, ane certane ſowme and quantitie thairof, ſpeciallie modifyit be the Juſtice in his precept, ſall be allowit be the Juſtice to the Schiref, for his expenſis maid and deburſit be the Schiref the time of the air; and the ſuperplus thairof ſall be payit to the King's Theſaurar be the Schiref, as he ſall be chargit thairto, within tithe of law, that is within xl. dayis nixt and immediatlie followand the firſt day of the air. *Iter. Juſt. c.* 8.

C. XXXVI. Of him quha is clengit be ane aſſiſe.

GIF ony man is clengit or maid quite be ane aſſiſe in the Juſtice air, the Juſtice ſould give him ane teſtimonial of his office, makand mentioun to all and ſindrie perſounis to quhais knawledge the ſamin ſould happin to cum, that ſic ane perſoun compeirand befoir him and his deputis, in the King's Juſtice air, haldin in ſic ane place, ſic ane day, moneth, and zeir, and being indytit be the rollis for art and part of thift, ſlauchter, burning, or for ony uther crime, denyit the ſamin *ſimpliciter*, in face of judgment, and thairanent ſubmittit himſelf to the knawlege of ane aſſiſe; the quhilk aſſiſe, efter diligent conſultatioun, and ripe adviſement, deliverit and pronuncit the ſaid perſoun quite, fré, and clene fra the challenge and crimes laid to his charge. *Iter. Juſtic. c.* 8.

C. XXXVII.

OF him quha is fylit be ane aſſiſe. *Vide ſtat. Alex. c.* 2.

C. XXXVIII. *De his qua impediunt i-*

GIF twa or ma Juſticiaris ar conſtitute in the commiſſioun grantit to

ter juſticiarium. to thame be the King, and ony ane of thame is abſent fra the court or air, na perſoun may be compellit to anſwer befoir him or thame quha is preſent, except thay wer conſtitute conjunctlie and ſeverallie in the commiſſioun. *Item*, Gif the Juſtice ſubſtitutis ony man in his place, not havand powar of the King to do the ſamin, na perſoun is haldin, aganis his will, to anſwer to the ſaid depute or ſubſtitute. *Item*, Gif the Judge is ſuſpect or refuſabil, and the ſamin is provin, and manifeſtlie knawin, na perſoun is haldin to defend or mak anſwer befoir him. *Lib.* 4. *c.* 27.

C. XXXIX. Anent the keiping of perſounis fylit in the Juſtice air.

GIF ony perſoun, indytit and accuſit in the Juſtice air, be convict for ony crimes of life and limb, he ſould be deliverit to the Schiref of the ſchirefdome quhair the air is haldin, to be kept quhill juſtice be done: And gif he be convict of ony uther crimes, quhairupon dome of life or member may not follow, ſic as ſpuilzie, he ſould in like maner be deliverit to the ſaid Schiref, to be kept in captivitie quhill he find ſufficient ſovertie for ſatisfactioun to be maid to the partie hurt and skaithit be him: And gif thairefter the Schiref lettis him furth, na ſufficient ſovertie beand fund, he is haldin and obliſt to ſatisfie the partie in like maner as he quha was convict, or his ſovertie, gif he had bene fund, aucht and ſould have done. 15 *April.* 1559, Elizabeth Hamiltoun *contra* Malcome Cambell, 1 *t. c.* 1227.

C. XL. ACTORNAYIS in the Juſtice airis ſould be honeſt perſounis. *Ja.* I. *fol.* 9. *act.* 50. 11 *Mart.* 1425.

C. XLI. OF burrowis repledgeand thair nichtbouris fra the Juſtice. *Ja.* IV. *fol.* 81. *act.* 9. 6 *Octob.* 1488.

C. XLII. THAT perſounis arreiſtit to the Juſtice air enter within bar. *Ja.* III. *fol.* 59. *act.* 72. 9 *Maij*, 1474.

The general band.

THAT is to ſay, firſt, gif gif ony perſoun dwelland within our houſis, or upon our landis foirſaidis, and all utheris our boundis, or within our takkis, ſteidingis, rowmis, or bailliaries, committis ony crime, ſic as treſſoun, fire-raiſing, murther, raviſching of women, ſlauchter, mutilatioun, reif, thift, recept of thift, foirthocht felonie, commoun oppreſſioun, hameſucken, recept of rebellis, aſſiſtance of theives and tratouris, takand ane aſſurance with our auld enemies of *Ingland*, or ſittand under the aſſeurance of theives of *Ingland* or *Scotland*, be quhatſumever meanis or wayis, efter the committing of ſic crimes, we beand requirit, thairto be the King's authoritie, or be his Juſtice, or Juſtice-Clerk, fall enter the perſoun dilatit of the faultis, ane or ma, ather at general Juſtice airis, or at privie dietis, as we ſall be requirit upon xl. dayis warning, to underly the law for the ſamin crimes thay ar dilatit for befoir the Juſtice or his deputis, ilk perſoun contenit in the actis of parliament, and becumis ſovertie thairfoir to the firſt air or court per-

peremptour, and ſall anſwer to our ſoverane Lord for thair eſchete gudis; and in cais the perſounis, or ony of thame, beis fugitive, and will not compeir to underly the law for the ſaidis crimes that thay ſall be dilatit of, we ſall expel thame, and put thame furth of our boundis, heritages, takkis, ſteidingis, rowmis, poſſeſſiounis, bailliaries, and landis foirſaidis, and thair wives and bairnis, and ſall tak thair ſteidingis and takkis fra thame, and put in uther perſounis to occupy the ſamin, and ſall hald theſe malefactouris, thair wives and bairnis, perpetuallie furth of the takkis and ſteidingis foirſaidis: And gif it ſall happin ony of theſe malefactouris to cum agane within our boundis, and be ſufferit to remane thairin xij. houris, we witting, in that cais, we grant and confeſs us culpabill and accuſabill of ony ſic faultis, ſkaithis and crimes that it ſall happin the ſaidis malefactouris, or ony of thame, to commit in time of thair returning or receptatioun: And alſwa, gif ony of our ſoverane Lord's lieges, put to his horn, cumis within our boundis foirſaidis, or ony part thairof, we ſall riſe aganis thame, with our kin, freindis, men, tenentis, ſervandis, and adherentis, and perſew thame, and tak thame, and bring thame to the law, gif it be in our powar, and ſall ſlay thame, or put thame furth of the countrey; and to this effect we ſall riſe, and put this to executioun aganis all rebellis, conſpiratouris, and with-ſtanderis of the King's Grace's authoritie; and heirto we ſall do our poſſibill diligence: And mair attour, quhenever ony effray happinis within the ſaidis boundis, we ſall, at the effray and furay, be ourſelfis, and all that we may get, riſe, follow, and perſew the ſaidis theives and reiveris at the uttermoſt of our powar, quhen ony depravatiounis and maiſterful reifis beis maid be thame upon ony *Scottiſmen*, like as we wald do for defence of our awin gudis, in cals thay wer in the ſaid danger, we beand warnit thairto be the ſchout and Baillies in the countrey, or utherwayis: And gif it beis fund that we ly ſtill at ſic effrayis, and ſufferis the ſaidis theives and reiveris to herrie our ſoverane Lord's lieges, not makand ony impediment, we then, and in that cals, grantis us culpabill of thair wicked and evil deidis, and art and part with thame thairintill: And gif it happinis ony reif, ſtouth, or oppreſſioun to be maid upon ony perſounis be the inhabitantis of our ſaidis landis, lordſchippis, rowmis, takkis, ſteidingis, and baillliaries foirſaidis; it ſall be leaſum to the perſoun or perſounis upon quhom the ſaid ſtouth or reif is committit, be thameſelfis, or ony utheris in thair namis, to perſew the theives, ſteillaris of thair gudis recentlie, *viz.* within —— dayis nixt efter the ſteilling thairof, as thay ſall beſt pleiſe, for recovering of thair awin gudis agane: And quhen thay get ſure advertiſement that the ſaidis theives, or thift, be recept within our boundis foirſaidis, and cumis and ſchawis the ſamin to us, we ſall be haldin be ourſelfis, or be ony of the ſpecial men of our kin, or domeſtick ſervandis, to ride, ſearch, and ſeik the ſaidis ſtollin gudis throuchout all our boundis; and gif the ſamin beis apprehendit and fund thairin, we ſall be haldin to mak reſtitutioun thairof to the partie complenar, without farder delay, and to preſent the ſteillaris to our ſoverane Lord's Juſtice, to be puniſht for thair demeritis, gif thay can be apprehendit: And gif we failzie heirintill, we ar content to be haldin culpabill and accuſabill for the crimes foirſaidis, and as favoraris, aſ-

aſſiſteris, and partakeris with the ſaidis theives in thair thiftuous and evil deidis, and to be callit and puniſht thairfoir with rigour; quhairintill gif we failzie, we ar content to bide the knawledge of ane aſſiſe, quhen and in quhat place it ſall pleis the King's Majeſtie and his ſucceſſouris to cauſe us to be accuſit: And gif it be fund that we ar culpabill or faultie in the premiſſis, it ſall be leaſum to the King's Grace to puniſh us by deid, priſoning or confiſcatioun of our gudis at thair will, and to hald us culpabill of all faultis and crimes to be committit be the malefactouris that we give ony aſſiſtance or favour to: And ſiclike, we ſall not reſſave or recept within the ſaidis landis and lordſchippis, ony perſounis that ar fugitive fra the law, or ar expellit or put furth of ony uther man's boundis; and gif we do in the contrare, to incur the panis abone written, and to be puniſht thairfoir accordinglie: And finallie, we ar content that this band be inſert in the buikis of adjournal, and to have the ſtrenth of ane act thairof; and that, for the crimes abone written, thair be letteris direct upon us, be deliverance of the Lordis of counſal, to cauſe us compeir befoir the Juſtice, or his deputis, at general Juſtice airis, or particular dictis, upon xv. dayis warning, at the inſtance of the King's Advocate, or ony uther partie complenand, or havand interes. Subſcryvit with our handis, *&c.*

Chalmerlane air.

C. I. Quha may be chargit to compeir in the Chalmerlane air.

THE Chalmerlane of *Scotland* beand purpoſit and of mind to hald his Chalmerlane air within ony of the King's burghis within this realme, ſould direct his precept to the Proveſt and Baillies of that burgh, chargeand and commandand thame to ſummound, warn and charge all and ſindrie perſounis quha aucht and ſould, or may be ſummoundit, to compeir and give preſence thairintill, befoir him or his deputis. *viz. Inprimis,* All burgeſſis of the ſaid burgh, als weill in-dwelland as furth-dwelland, to heir and ſé thame decernit to do, underly, and obey all and ſindrie thingis quhilk, be the law and conſuetude of burrowis, thay aucht and ſould do.

Item, All and ſindrie Baillies of the ſaid burgh, Serjandis, Baxteris, Brouſteris, Fleſchouris, Appriſeris of fleſch, Taiſteris of ail, Tavernaris of wine, Cuſtumaris, als weill of the greit as of the ſmall cuſtumis, Fiſcheris of the quhyt fiſch and of ſalmond, Milleris, keiparis of the tron, Gaugaris, Tailzeuris, and all uther craftiſmen; togidder with all and ſindrie Officiaris that buir office within that burgh ſen the laſt Chalmerlane air; to anſwer to all ſic thingis as ſall be laid to thair charge, and to do thairanent as law will.

Item, All and ſindrie the foirſaidis perſounis, and all thay that haldis buithis, and all and ſindrie craftiſmen, to preſent and exhibite to the ſaid Chalmerlane air all meſouris, weichtis, and inſtrumentis, quhilk thay uſit, or uſis, in exerciſing thair office or craft.

Item, That the Proveſt and Baillies of that burgh, be opin proclamatioun, warn and charge all and ſindrie perſounis that will compeir befoir the Chalmerlane at his air, to perſew or defend in ony kind of cauſe, in form of law; and that thay tak ſovertie, als weill fra

fra him quha will perſew, as fra him that will defend, that the ane ſall compeir to perſew, and that the uther ſall defend as law will.

Item, That thay deliver, under thair ſeill and ſubſcriptioun, to the Schiref, or his deputis, all the namis of ſoirſtalleris, and of thame that makis ony purpreſture within the King's propertie or commountie, als weill within burgh as without the famin; to the effect that thay, dwelland within his juriſdictioun or ſchirefdome, may be attachit and ſummoundit be him, to compeir in the ſaid Chalmerlane air: And in like maner, that thay give the namis of all perſounis dwelland within the ſchiresdome that ar indytit, to the Schiref, that he may cauſe thame be attachit and arreiſtit, as ſaid is.

Item, The Chalmerlane may command or compel the ſaidis Proveſt and Baillies to mak in dew time ſufficient proviſioun for him and his deputis, upon thair reſſonabill expenſis. *Iter. Camer. c.* 1.

Item, The Chalmerlane ſould direct his precept to the Schiref, and his deputis, chargeand and commandandand him, that incontinent he attach all and ſindrie perſounis dwelland within the ſchirefdome, quhais namis ſall be gevin to him in writ be the Proveſt and Baillies of the burgh, and that he put thame under ſaif and ſure pledges that thay ſall compeir to the Chalmerlane air at lauchful day, to anſwer to ſic thingis as ſall be laid to thair charge; and that the Schiref, and his deputis, be in like wayis perſonallie preſent at the ſaid air, to preſent and verifie the ſaidis attachiamentis. *Iter. Camer. c.* 2.

C. II.
Of the entring and beginning of the Chalmerlane air.

In the firſt ſould compeir the Chalmerlane, and his deputis, ane or ma, and befoir thame all the burgeſſis, als weill within the burgh as without the famin; and thay that ar fund abſent ſould be amerciat: And the ſuitis beand callit, and the court ſenſit, the Baillies and Serjandis for that preſent zeir, and alſwa thay quha wer for the zeir bygane, ſall be callit and accuſit fra the time of the laſt air. Thairefter ane gude and leill aſſiſe, of the beſt and maiſt faithful of the burgh, ſall be choſin, to tak inquiſitioun upon the articlis and punctis of the air.

Item, It ſall be ſpeirit at the Baillies, gif thay have ony commiſſioun or not, and be quhat lawis thay govern the King's burgh: Then all plaintis and querrellis ſould be callit, and put to the knawlege of the ſaid inqueſt.

Item, The Chalmerlane's precept ſould be askit, quhilk he directit to the Proveſt and Baillies, be virtue of the quhilk thay ſummoundit all perſounis to the air, togidder with the lauchful indorſatioun thairof, and all pledges fund befoir thame: And that beand done, the rental of the burgh ſould be askit, quhairby the burrow-maillis of all rudis of land within the burgh ſould be liftit and takin up, als weill of biggit houſis as of waiſt landis within the burgh.

Item, Sould be askit in writ, all the namis of the brether of gild, als weill theſe dwelland without the burgh as within the famin.

Item, The namis of the Baillies, and of all the Officiaris of the town, ſould be askit in writ. And laſt of all, the ſummoundis and attachiamentis ſould be preſentit and verifyit with ſufficient witneſſis. *Iter. Camer. c.* 3.

C. III. Challenge of Proveſt and Baillies.

FIRST, That thay do not juſtice, nor ar not reddie to do the ſamin, quhen thay ar requirit thairto, efter the form of thair aith maid the time of thair electioun.

Item, That thay do not juſtice equallie, als weill to puir as rich.

Item, That thay do not juſtice, for favour, feid, ot haitrent.

Item, That thay tak bribes, to leive juſtice undone, or do the ſamin.

Item, That thay cauſe breid and aill be ſauld within thair houſis, aganis the law of the burgh.

Item, That thay give heritabill ſaſine, or for lang time, of landis lyand within burgh, ſauld to him that takis the ſaſine befoir thay wer offerit to the narreſt airis.

Item, That thay give ſaſine of landis, notwithſtanding that ony man object aganis the ſamin.

Item, That thay cauſe not lipper folk to be put furth of the burgh, and makis not inquiſitioun thairof thriſe in the zeir. *Iter. Camer. c.* 28.

Item, That thay keip not, or cauſe not be keipt, the ſtatutis lauchfullie maid anent the prices of wine, aill, breid and fleſh.

Item, That thay do not juſtice ſa aft as law requiris, upon thame that tranſgreſs or contravenis the lawis of the burgh.

Item, That thay mak not examinatioun ilk oulk, or ilk xiiij. dayis, of breid, aill, wine, fleſh, and uther thingis that in the burgh ſould be examinat.

Item, That thay mak thame partie in court, and behavand thameſelfis partiallie, lettis and ſtoppis juſtice.

Item, That thay obey or executis not the King's or Chalmerlane's command direct to thame in chooſing of aſſiſe.

Item, That thay mak impoſtis or taxatiounis without counſal of the communitie.

Item, That the commoun gild of the burgh beand gadderit togidder, thay keip it not leillelie to the proffit of the burgh, and ſpendis it in thair awin uſe as thay pleiſe.

Item, That thay grant the fredome of the burgh, to buy and ſell, and let thair commodities to unfremen, quhairthrow the burgeſſis proffit is hurt and deſtroyit.

Item, That thay cauſe not the burgeſſes walk the burgh ſufficientlie in time of nicht, as thay aucht to do; and that thay cauſe the puir and not the rich to walk.

Item, That thay accept plaintis, and determine thame, during the dependence of the aſſiſe thairanent. *Iter. Camer. c.* 4.

C. IV. Challenge of Serjandis.]

THAIREFTER the Serjandis of the burgh, quha has bene or is in office ſen the laſt Chalmerlane air, ſall be callit and accuſit;

1. That thay do not preſent faithfullie to the Baillies in the burrow court, nor to the Chalmerlane in his air, all attachiamentis fund in thair handis.

2. That thay preſent not to the Baillies all the poindis and diſtreſſis takin up fra ony man for his fault.

3. That thay tak not watchis equallie, als weill fra the rich as fra the puir.

4. In ſic thingis as ar neceſſar to the King's uſe, his Juſtice or Chalmerlane, thay behave not thameſelfis equallie in taking up of the ſa-

ſamin, bot dois ſpare or forgive thair freindis or weilwiſheris, and vexis, trublis, and burdenis utheris of the burgh.

5. In reſſaving payment of the ſaidis dewties, thay mak not compt for ſa mekil as thay reſſave, or haldis ony part thairof in thair handis, and convertis the ſamin to thair awin proper uſe; be the quhilk the King's name is hurt, and the communitie of the burgh is skaithit.

6. That thay tak not tryal of all kind of breid, and of aill, as thay ar commandit to be tryit and examinat; bot for gain and lucre thay ſpair ſum, and takis fra utheris, quhairthrow the ſtatutis maid thairanent may not be faithfullie keipt. *Iter. Camer. c. 5.*

C. V. Challenge of Fleſhouris.

In the firſt, that thay ſell not the fleſh conform to the price ſet thairupon be the honeſt men of the burgh.

Item, That thay ſell the fleſh befoir it be pryſit, as thay pleiſe, or efter it is pryſit thay ſell it dearer, and of ane greiter price.

Item, That thay buy and ſlayis beiſtis within time of nicht, aganis the law of the burgh.

Item, That thay foirſtall the burgh, buyand without, in ane town in the countrey.

Item, That thay ſell fleſh without ane tokin or ſigne, or befoir the putting out of the ſamin.

Item, That thay ſell gude fleſh to ſtrangeris, and evil fleſh to nichtbouris, or contrary wayis.

Item, That thay conceale or denyis the price of fleſh to thame that deſiris to knaw the ſamin.

Item, That thay ſell fleſh in ſecret, and not in thair buith, or in thair buith, not havand thair window opin.

Item, That thay mak lardner in greit, and ſellis it out to tavernis in ſmall, aganis the law of the burgh.

Item, That thay deny to the appryſouris how thay buy thair beiſtis in the countrey, contrare thair aith, ſwa that thay may not be lauchfullie pryſit.

Item, That thay tak tar ledderis aff the hides, and thairefter affirmis the ſamin to be haill and not diſmemberit.

Item, That thay mix togidder auld fleſh and new, ſayand all is of ane, or ony unhalthſum fleſh.

Item, That thay blaw the fleſh, and cauſe it ſeme fat and fair, throw the quhilk ſindrie men takis ſeiknes, and utherwayis ar beguylit.

Item, That thay have not all maner of fleſh reddie to ſell as effeiris for the time. *Iter. Camer. c. 8.*

C. VI. Challenge of fleſh pryſouris.

In the firſt, that thay ar not reddie to priſe the fleſh, quhen the ſign is put out.

Item, That thay ſeik not ilk mercat-day, nor dois diligence, to knaw how and quhat fleſh is ſlane and ſauld, *viz.* beif, muttoun, ſwine, and puttis not ane price thairupon at thair diſcretioun, not reſſavand or admittand the aith of ony fleſhour in this point.

Item, That thay leive it unpriſit for ſweirneſs, or pryſis over gude cheip, for favour or feid, in fraud of the King's lieges. *Iter. Camer. c. 7.*

In

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Item, That thay mak impoſtis or taxatiounis without counſal of the communitie.

Item, That the commoun gild of the burgh beand gadderit togidder, thay keip it not leillelie to the proffit of the burgh, and ſpendis it in thair awin uſe as thay pleiſe.

Item, That thay grant the fredome of the burgh, to buy and ſell, and let thair commodities to unfremen, quhairthrow the burgeſſis proffit is hurt and deſtroyit.

Item, That thay cauſe not the burgeſſes walk the burgh ſufficientlie in time of nicht, as thay aucht to do; and that thay cauſe the puir and not the rich to walk.

Item, That thay accept plaintis, and determine thame, during the dependence of the aſſiſe thairanent. *Iter. Camer. c.* 4.

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2. That thay preſent not to the Baillies all the poindis and diſtreſſis takin up fra ony man for his fault.

3. That thay tak not watchis equallie, als weill fra the rich as fra the puir.

4. In ſic thingis as ar neceſſar to the King's uſe, his Juſtice or Chalmerlane, thay behave not thameſelfis equallie in taking up of the ſa-

ſamin, bot dois ſpare or forgive thair freindis or weilwiſheris, and vexis, trublis, and burdenis utheris of the burgh.

5. In reſſaving payment of the ſaidis dewties, thay mak not compt for ſa mekil as thay reſſave, or haldis ony part thairof in thair handis, and convertis the ſamin to thair awin proper uſe; be the quhilk the King's name is hurt, and the communitie of the burgh is skaithit.

6. That thay tak not tryal of all kind of breid, and of aill, as thay ar commandit to be tryit and examinat; bot for gain and lucre thay ſpair ſum, and takis fra utheris, quhairthrow the ſtatutis maid thairanent may not be faithfullie keipt. *Iter. Camer. c. 5.*

C. V. Challenge of Fleſhouris.

In the firſt, that thay ſell not the fleſh conform to the price ſet thairupon be the honeſt men of the burgh.

Item, That thay ſell the fleſh befoir it be pryſit, as thay pleiſe, or efter it is pryſit thay ſell it dearer, and of ane greiter price.

Item, That thay buy and ſlayis beiſtis within time of nicht, aganis the law of the burgh.

Item, That thay foirſtall the burgh, buyand without, in ane town in the countrey.

Item, That thay ſell fleſh without ane tokin or ſigne, or befoir the putting out of the ſamin.

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Item, That thay ſell fleſh in ſecret, and not in thair buith, or in thair buith, not havand thair window opin.

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Item, That thay tak tar ledderis aff the hides, and thairefter affirmis the ſamin to be haill and not diſmemberit.

Item, That thay mix togidder auld fleſh and new, ſayand all is of ane, or ony unhalthſum fleſh.

Item, That thay blaw the fleſh, and cauſe it ſeme fat and fair, throw the quhilk ſindrie men takis ſeiknes, and utherwayis ar beguylit.

Item, That thay have not all maner of fleſh reddie to ſell as effeiris for the time. *Iter. Camer. c.* 8.

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In the firſt, that thay ar not reddie to priſe the fleſh, quhen the ſign is put out.

Item, That thay ſeik not ilk mercat-day, nor dois diligence, to knaw how and quhat fleſh is ſlane and ſauld, *viz.* beif, muttoun, ſwine, and puttis not ane price thairupon at thair diſcretioun, not reſſavand or admittand the aith of ony fleſhour in this point.

Item, That thay leive it unpriſit for ſweirneſs, or pryſis over gude cheip, for favour or feid, in fraud of the King's lieges. *Iter. Camer. c. 7.*

In

C. VII. Challenge of malt-makeris.

IN the firſt, that thay mak evil and gude malt altogidder, quhair thay ſould mak thame ſindrie, and ſell thame of ſindrie prices.

Item, That thay ſteip not thair beir for greit haiſt of making thairof.

Item, That thay let it akirſpire and ſchuit out all the pith of it, quhair it ſould ſteip and cum out at the ane end allanerlie.

Item, That thay mak it on ane evil flure, throw the quhilk it is maid unhelthſom.

Item, That thay reik it on the kill.

Item, That thay grind it over ſmall, that it will not run quhen it is maskit, quhair it ſould be ground bot in twa or thré. *Iter. Camer. c.* 26.

C. VIII. Challenge of Brouſteris.

FIRST, That thay ſell not the aill conform to the price of the beir, nor zit efter the price ſet be the appryſouris ſworn thairupon.

Item, That thay gar not aſſay and taiſt thair aill befoir thay ſell it.

Item, That thay ſet not out thair aill wand, to certifie the taiſteris that thay cum to taiſt it.

Item, That thay have not meſouris, *viz.* quart, pint, thrid part, ſaxt part, and uther meſouris effeirand to the King's money, be the quhilk meſouris his lieges may be ſervit quhen thay miſter.

Item, Albeit thay have ſic meſouris, zit thay refuſe to ſell thairwith in ſmall quantitie, bot ſellis in greit pottis, the quhilk oft times ſindrie perſounis ar not of powar to buy.

Item, That thay mingil better aill and worſe togidder, and ſellis all of ane price, as gif it wer ane aill.

Item, That efter it is taiſtit, thay tun it over agane.

Item, That quhen the taiſter cumis to taiſt it, thay deny it, ſaying thay have na aill to ſell.

Item, That thair pottis and meſouris contenis not the King's meſouris of cleir aill, bot in ilk ane of thame is ſum barm, mair or leſs, quhen as thay ſould contene gude and cleir aill, without dreggis or barm.

Item, That thay uſe thair office of brewing, als weill quhen thay ar ſuſpendit of thair office for zeir and day, as at ony uther time. *Iter. Camer. c.* 10.

C. IX. Challenge of guſteris and taſteris of aill.

IN the firſt, that thay ar not reddie quhen the ſign or aill wand is ſet furth, or quhen the Brouſter has tunnit the ſamin.

Item, That thay drink in ilk houſe quhair thay ſould bot anis taiſt, quhairthrow thay tine thair guſt, and ar maid drunken.

Item, That thay enter within the houſe, and ſtand not in the mid-ſtreit befoir the dure, nor ſendis not ane of thair companie within the houſe, with thair Serjand, to cleſt and cheiſe the barrel or pitcher quhairof thay will taiſt, and to preſent ane qqantitie thairof to his companiounis.

Item, That thay try and examinis not the aill, bot ſayis *ſimpliciter* it is gude or ill.

Item, That thay preſent not all the faultis of the aill to the Baillies, bot for thair ſingular proffit concealis thame, and puttis thame away, throw the quhilk the King's lieges ar deceivit. *Iter. Camer. c.* 6.

FIRST,

C. X. Challenge of wine tavernèris.

FIRST, That thay ſell the wine befoir it be taiſtit.

Item, That thay ſell it with thair awin proper meſouris, and not with meſouris ordanit and approvin be the Baillies.

Item, That thay mix togidder gude wines and corrupt wines, and ſellis thame for gude wines and haill, throw the quhilk oft-times the King's lieges takis greit skaith and infirmitie.

Item, That thay ſell not thair wines efter the price ſet thairupon be the taiſteris.

Item, That thay mix thair wines with water, or with uther kind of liquor. *Iter. Camer. c.* 17.

C. XI. Challenge of Baxteris.

IN the firſt, that thay hald ma ſervandis in the baik-houſe nor law will, quhairas thair ſould be bot four perſounis, *viz.* ane maſter, twa ſervandis, and ane knave.

Item, Quhair thay ſould tak ilk time for the maſter 1 *d.* for the twa ſervandis 1 *d.* and for the knave 1 farding, thay tuke fra the King's lieges mair, at thair awin pleaſour.

Item, That thay bowt not ilk kind of flour to mak breid thairof, efter the law of the burgh; nor baikis not ſic breid as thay ſould do, *viz.* quhite breid, gray breid, and uther breid.

Item, That thay baik not ſindrie breid, of ſindrie prices, anſwerable and accordand to the King's money, that is, of a peny, ane halfpeny, and ane farding, as men has miſter.

Item, That thay keip not the weicht of breid preſcrivit to thame be the Baillies. *Iter. Camer. c.* 9.

C. XII. Challenge of Millaris.

FIRST, That thay hald ma ſervandis in the miln than law will, in harm and hurt of the King and his lieges.

Item, That thay keip not to ilk man his rowme, as law will, and efter the form of thair aith, bot, for gane and lucre, thay ſuffer ane to occupie ane uther's rowme.

Item, That thay maliciouſlie occupie ane greiter ſpace betwix the hopper and the ſtane, or betwix the twa ſtanis, than thay ſould of law, for thair awin profit; for the law permittis na mair than the thickneſs of ane ſomer-tane wand of haſill.

Item, That thay tak ſmoltis or ſalmond in the miln-dammis.

Item, That thay have twa meſouris, ane to tak with, and ane uther to deliver with agane.

Item, That thay tak mair multure than law and conſcience will.

Item, That thay ſerve in the miln, not beand ſworn to thame that cumis to the miln.

Item, That thay keip not the miln baith day and nicht, quhen men's corn is thairin; in default of the quhilk keiping, the ſamin, in all, or in part, is ſtollin or deſtroyit, or then be ſudden fludis of water tane away. *Iter. Camer. c.* 11.

C. XIII. Challenge of fiſheris of quhite fiſh.

FIRST, That thay ſell thair fiſh at the ſea-ſide, and not at the King's mercat.

Item, That thay ſell fiſh in time of nicht, and hides thame in thair houſis and harbries.

Item, That thay brek thame, and bringis thame furth in pennie-worthis.

Item, That thay houſe fiſhes, and ſaltis thame, in contrare the King's lawis.

Item, Quhen thay opin fiſh, thay luke not gif thay be miſſel fiſh, or not, and that is the cauſe that na fiſher ſould mak laidner.

Item, That thay ſell fiſh upon haly-dayis, contrare the King's ſtatutis, and thair awin ordinances maid in plane fiſher court. *Iter. Camer. c.* 20.

C. XIV. Challenge of fiſheris of reid fiſh.

In the firſt, that thay fiſh in wateris, not keipand the midſtreame, conform to the law.

Item, That thay fiſh baith day and nicht, and in time forbidden, quhairas be the law thay ſould not tak ſalmond efter the time of the evning prayeris on *Satterday*, unto the ſone riſing on *Mononday*. *Iter. Camer. c.* 21, *Leg. burg. c.* 154.

C. XV. Challenge of huikſtaris.

In the firſt, that thay buy thair merchandice befoir the lauchful time, *viz.* the hour of prime in ſomer, and the thrid hour in winter.

Item, That thay buy without the portis of the burgh, foirſtalland the burgh, not preſentand the ſamin, with thair woll, hide, skin, meil and malt.

Item, That thay uſe falſe meſouris and weichtis wrangouſlie, and aganis the law.

Item, That thay pay not the King's cuſtumis to the Cuſtumaris, als oft as thay ſell thair gudis.

Item, That thay ſell thair gudis within thair houſis, upon thair flure, in greit prejudice of the King, and concelling of his cuſtumis.

Item, That thay ar foir-buyaris, couparis, and ſelleris of quheit, beir, and aitis, and turnis all into merchandice.

Item, That thay uſe gild merchandice, baith baikand and brewand, toppand wine, and ſelland walx and ſoap, and uſand uther fredome quhilk thay aucht not to do.

Item, Thay buy ledder, and barkis it, and conceillis the King's cuſtumis. *Iter. Camer. c.* 18. *Leg. burg. c.* 70.

C. XVI. Challenge of Tailzeouris.

In the firſt, thay mak refuſe and skreidis in men's claith, ſumtimes for haiſt, and ſumtimes for ignorance.

Item, That thay tak pieces and skreidis to ſleives, and uther ſmall thingis.

Item, That thay mak men's garmentis and claithis utherwayis than men biddis thame.

Item, That thay ſew with falſe threid and graith.

Item, That thay keip not thair day to ilk man.

Item, That thay mak thame maſteris or thay can knaw the craft, in greit skaithing of the King and pepill.

Item, That thay work on haly-dayis, aganis the law of God. *Iter. Camer. c.* 4.

C. XVII. Challenge of Souteris.

In the firſt, that thay bark and mak ſchoone utherwayis than law will; that is, thay buy not fic hides as has the horn and the eare of equal lenth.

Item,

Item, That thay mak ſchoone, bures, or uther graith, of the ledder befoir it be barkit.

Item, That thay ſew with falſe and rotten threid, throw the quhilk the ſchoone ar tint befoir thay be half worn.

Item, That quhair thay ſould give thair ledder gude oyle or taulch, thay give it but water and ſalt.

Item, That thay mak ſchoone and work of it or it be wrocht of curreit, in greit prejudice of the King's lieges. *Iter. Camer. c.* 22.

C. XVIII. Challenge of Webſtaris.

In the firſt, that thay mak over lang thrumis, in ſkaithing of the pepil.

Item, That quhair thay tak in with weichtis, quhen thay give out the claith thay mak it donk and wet, caſtand water on it, and uther thingis, to cauſe it to wey, and thairthrow haldand to thameſelfis ane greit quantitie out of it.

Item, That thay tak ane man's zairn, and puttis in ane uther man's web for haiſt. *Iter. Camer. c.* 25.

C. XIX. Challenge of Skinneris.

In the firſt, that thay mak gluives, and uther graith, befoir thair ledder be kindlie wrocht and maid.

Item, That thay hunger thair ledder for default of graith, that is to ſay, alme, eggis, and uther thingis.

Item, That thay dearth the mercat and countrey of eggis buying.

Item, That thay fyle the King's water.

Item, That thay ſew and work with falſe threid and graith.

Item, That thay mak thame malteris befoir thay ken the craft. *Iter. Camer. c.* 23.

C. XX. Challenge of Saidleris.

In the firſt, that thay mak the ſadillis of grene treis, quhair thay ſould be of widderit and dry timber.

Item, That they feſtin thame not faſt, nather bindis thame with ledder or glew, as thay ſould be.

Item, That thay knit to the harniſing falſe brydil bittis, faltie or brokin ſteropis, throw the quhilk many men ar hurt and ſlane.

Item, That thay keip not thair promiſe and day to all men.

Item, That thay keip not the haly-dayis. *Iter. Camer. c.* 27.

C. XXI. Challenge of Cuſtumaris.

In the firſt, that thay tak mair cuſtume nor is permittit of the law, contenand the King's cuſtumis in writ.

Item, That thay, be negligence, takis leſs cuſtume nor thay ſould do, in hurt and prejudice of the King.

Item, That thay tak not ilk man's aith upon the quantitie of thair cuſtume gudis quhilk thay preſent to the mercat, bot takis the famin fra ſum, and ſpairis the uther for favour.

Item, That quhair thay doubt anent the quantitie of the gudis preſentit to the mercat, thay do not diligence to ſerch and knaw the famin for the King's proffit, als weill be the teſtimonie of the pepil, as be meſouring and weying of the famin; and ſwa ſufferis and permittis the famin to paſs over, in harm and skaith of the King's cuſtume.

Item, That thay ſerch not all ſhippis for woll that is not cuſtumit, nor trone weyit, nor evil trone weyit.

Item, That quhair thay reſſave the King's or Chalmerlan's com-

mand

mand to mak payment to ony perſoun of ony money, gudis or geir, thay pay the ſamin to ſum for proffit and lucre, and fraudfullie abſtractis the ſamin fra utheris, haldand the ſuperplus to thameſelfis. *Iter. Camer. c.* 12, 13.

C. XXII. Challenge of Gaugeouris.

GAUGEOURIS or meſouraris of weichtis may be challengit, that thay reſſave a fie for thair office, and dois not that quhilk pertenis thairto: That thay mark not claith, barrellis, or uther veſſellis, with the ſeill of thair office, quhairthrow the buyar is hurt and skaithit, not knawand quhidder he has the juſt and lauchful meſour or not. *Iter. Camer. c.* 14.

C. XXIII. Challenge of Tronneris of woll.

TRONNERIS of woll may be challengit, that thay do not thair office in the aſſaying of woll, bot that thay aſſay woll pertening to ſum perſounis, and ſpairis utheris; and weyis the ſamin unaſſayit, for meid or gift.

Item, Thay may be challengit anent the uſing of weichtis, baith greit and ſmall. *Iter. Camer. c.* 15.

C. XXIV. Challenge of Proviſouris.

THE King, his Juſtice, or his Chalmerlane's Proviſouris, may be challengit, that thay mak mair proviſiounis nor thay ar commandit to do, and under colour of the King's price thay clock and follow thair ſingular proffit and commoditie.

Item, That thay mak not full and compleit payment of ſic thingis as thay tak to the King's uſe, or to the uſe of his Juſtice and Chalmerlane: And albeit the ſamin be allowit to thame in thair comptis, thay pay to quhom thay pleiſe, and how meikle thay pleiſe, quhairthrow the King's name is hurt, and his Hienes skaithit; the quhilkis lieges dar not pleinzie, for feir and terrour of the ſaidis Officiaris. *Iter. Camer. c.* 18.

C. XXV. Privie dittay to be takin up in the Chalmerlane air.

ITEM, Gif the Proveſt and Baillies dois juſtice at all times, according to thair office and law.

Item, Gif ony deforcement be committit aganis the Officiaris and Baillies of the burgh.

Item, Gif the Baillies cauſis the meſouris and weichtis be exactlie examinat.

Item, Gif the Baillies executis juſtice upon the Baxteris, Brouſteris, *&c.* efter thay ar amerciat.

Item, Gif the Baillie is partner, or takis ony proffit with thame quha has the King's proffit and rentis within burgh in tak and aſſedatioun; or gif thay, in ſetting of the King's fermis, do fraud or favour to ony man.

Item, Gif the Proveſt and Baillies has faithfullie payit all puir folkis, for thair cariage and labouris done be thame, conform to the allowance tane be thame in thair comptis thairanent.

Item, Gif ony abſtractis and hides thair gudis and geir at the cuming of the Chalmerlane, or his Clerk, to the burgh.

Item, Gif all taxatiounis within burgh be equallie raiſit upon the puir and rich, conform to thair faculties.

Item, Gif the commoun gude of the burgh be ſet in tak and aſſedatioun, for the weill and proffit of the burgh; and gif juſt and faithful compt thairof be maid to the communitie of the burgh;

and

and gif the ſamin be not maid, be quhom it is not maid; in quhais handis it cumis, and how it is ſpendit.

Item, Gif the Proveſt and Baillies mellis or intromettis with pleyis appertening to the crown, *viz.* fire, raviſhing of women, murther, or robberie.

Item, Gif the Proveſt and Baillies cauſis not put in writ and rolment thair interloquutour gevin thairin.

Item, Gif ony Baillies, Chalmerlanis, Lieutenantis, for price or prayer, has aſſiſtit or concurrit with Biſchoppis, Abbotis, Priouris, Erlis, or with ony uther perſounis, contrare the King, or aganis the eſtait and libertie of the burgh.

Item, Gif ony perſoun has miſ-ſaid or injurit the Baillies or Serjandis of the burgh, in the executioun of thair office, or ſtoppit thame, that thay micht not do juſtice as thay ſould do be the law.

Item, Gif the Baillies ſellis the libertie of the burgh to ony perſoun, without licence of the communitie.

Item, Gif the Serjandis be choſin commounlie be all the burgeſſis, efter the conſuetude of the burgh.

Item, Gif the Serjandis takis ony bud or gift for not ſummounding, and dilating of ony perſoun that is ſummoundit, to paſs upon ane aſſiſe.

Item, Gif Brouſtaris ſellis aill be juſt and ſufficient meſouris.

Item, Gif thay ſell thair aill be markit meſouris.

Item, Gif thair be ony man or woman alledgeand thame to be Brouſtaris, and zit ſellis aill befoir it be taiſtit, to thame quha ar in buirding and tabill with thame, or to thair familiar freindis.

Item, How oft the Brouſtaris ar unlawit in the zeir.

Item, Gif the Baxteris keipis the weicht of breid gevin and deliverit to thame be the Baillies, and how oft thay ar unlawit in the zeir.

Item, How oft the Fleſhouris ar unlawit in the zeir.

Item, Gif the pryſouris of fleſh dois the ſamin juſtlie as thay aucht to do of the law.

Item, Gif ony Fleſhour, beand burges, ſlayis or hand-killis ony beif or fleſh with his awin handis.

Item, Gif thair be ony Cuikis or Pottiſearis, quha bakis pyis, and ſellis thame not quhen thay ar hot, bot efterwart heatis thame agane, and ſwa ſellis thame: And the like to be underſtuid of fleſh and fiſh.

Item, Gif thair be ony that uſis doubill meſouris or weichtis within the burgh, buyand with ane, and ſelland with ane uther.

Item, Gif all meſouris and weichtis of the burgh be markit with the commoun mark or ſeill thairof; and gif thair be ony perſounis that uſis ony weichtis and meſouris that ar not markit.

Item, Gif thair be ony uther perſoun than ane burges havand hand-milnis, or brewand and makand malt without licence; and gif ony perſounis allowis or mantenis the ſamin.

Item, Gif thair be ony that with-haldis and abſtractis thair cornis and multuris fra the King's milnis, quhairto the ſamin pertenis.

Item, Gif ony Soutaris be Barkaris.

Item, Gif thair be ony hides not havand the earis and the hornis of equal lenth.

Item, Gif ony Litſtar, beand burges, puttis his awin hand in the lit-fat.

Item, Gif Litſtaris or Soutaris, that ar gild-brether, uſis the craft with thair awin handis.

Item, Gif ony man ſellis fiſh in ſmall in the King's mercat, or ony uther place, befoir lauchful time and hour.

Item, Gif the commoun purſe be weill keipit, and equallie dividit, to the commoun proffit.

Item, Gif thair be ony foirſtalleris within the burgh, quha foirſtallis be land or be ſea.

Item, Gif thair be ony burgeſſis that troublis, or ony way moleſtis, aganis the law, ony ſtrangear, Merchand or uther, with thair gudis, cumand be land or be ſea, not payand thame in dew time ſic thingis as thay ſould pay, or doand to thame ony harm or skaith, quhairby thay ceiſs to return and cum to the ſamin burgh with thair merchandice, to the greit hurt and skaith of the King and his lieges.

Item, Gif thair be ony lipper folk quietlie reſſavit within the burgh.

Item, Gif thair be ony opin and commoun flyteris, defameris, and ſclandereris of thair nichtbouris, or ony rebellis within the burgh; or gif thair be ony women or men commoun ſclandereris of thair nichtbouris, man or woman, man's wife or maiden, throw the quhilk oft-times greit skaith and tinſel happinis; that is to ſay, ane man leivand his wife throw ſclander and evil brute, and a maiden be evil report be left unmaryit.

Item, Gif thair be ony unfremen within burgh, or without the ſamin.

Item, Gif thair be ony that unjuſtlie occupyis or with-haldis the King's or uther men's landis.

Item, Quha ar the occupyaris of landis and rentis cuming in the King's handis be reſſoun of eſchete, or foirfaltour.

Item, Gif thair be ony that hides and concealis the King's rentis within burgh.

Item, Gif thair be ony that mortifies thair landis to the kirk, and puttis the ſamin in the handis of religious men, without licence askit and obtenit fra the King.

Item, Gif thair be ony that abſtractis thair ſuitis fra the King's court.

Item, Gif thair be ony land, within or without burgh, that payis not to the King rent and maill.

Item, Gif thair be ony that committis purpreſture in commountie, or in ony uther man's propertie, or upon the gait, be ſetting furth of ane ſide-wall, gavill, or dike of his houſe or bigging, or be appropriating of the commoun earth, to thair proper heritage, ſettand up dikes, or zit utherwayis holding or taking clay of the commoun earth, and appropriating the ſamin to thair awin uſe.

Item, Gif thair be ony perjurit or menſworn perſounis within the burgh.

Item, Gif thair be ony that is exylit, or has foirſworn the town for debt, or ony uther cauſe.

Item, Gif ony baſtard has conqueiſt ony landis, and is deceiſt, without lauchful airis of his bodie.

Item,

Item, Gif ony commoun vennel, of auld ſituat within the burgh, havand paſſage to water, or to commoun paſture, is ſtoppit within the burgh; and be quhom the ſamin is ſtoppit.

Item, Gif thair be ony that procuris the aſſiſtance of up-landis men to cum to burrow-courtis, in hurt of thair nichtbouris.

Item, Gif thair be ony that drawis thair nichtbour to the eccleſiaſtical court fra the temporal court of the burgh, in ſic thingis as pertenis to the juriſdictioun of the burgh.

Item, Gif thair be ony that callis thame Officiaris or Magiſtratis, and haldis not buird and tabill.

Item, Gif thair be ony that harberis or receiptis miſdoaris, in time of day or nicht.

Item, Gif thair be ony that paſſis away with the King's cuſtume be day or be nicht.

Item, Gif thair be ony that reveillis the King's counſal, or thair nichtbouris, tuiching ony aſſiſe, inqueiſt, or ony uther privitie.

Item, Gif thair be ony that bringis in falſe money furth of uther realmis.

Item, Gif thair be ony domes agane ſaid within the burrow-court, quhilk ar not preſentit to the Chalmerlane.

Item, Gif thair be ony brigantis within the burgh, and quhat thay ar.

Item, Gif the King's wedowis be conſtranit to walk within the burgh.

Item, Gif thair be ony that receiptis or harberis ony man within the burgh langer nor ane nicht, for quhom thay will not be borgh or ſovertie.

Item, Gif the meithis, boundis and marchis of the burgh be faithfullie kept in all partis.

Item, Gif thair be ony that uſis the fredome of the burgh, quha has not ane biggit land within the ſamin within zeir and day efter he is maid burgeis.

Item, Gif the cuſtumis, greit and ſmall, be weill uſit, and gif thair be ony that carryis away woll, skin, hide, or uther merchandice, not payand the juſt cuſtume thairfoir.

Item, Gif thair be ony that ſellis merchandice in greit, not payand the greit or ſmall cuſtume thairfoir.

Item, Gif thair be ony braggeris in judgment within court.

Item, Gif dittay be tane upon hoſtellaris within burgh.

Item, Gif ſtallengeris buy and ſell frelie within burgh, and be quhais proviſioun thay brew or mak malt, or has milnis.

Item, Gif thair be ony that favouris ony uther Lord or maſter mair nor the King, paying him ony zeirlie rent or maill.

Item, Gif thair be ony that ſpairis the rich, and ſummoundis the puir, to paſs upon aſſiſe.

Item, Gif thair be ony ligue, pactioun, or confederatioun betwix ony in-dwellaris of the burgh, be the quhilk nichtbouris ar injuſtlie skaithit, and the puir oppreſt.

Item, Gif thair be ony that ſettis thair ſtairis farder furth nor the law permittis, *viz.* four fute to the channel of the calſay.

Item, Gif thair be ony ſtoupis ſet under ſtairis, ſtoppand the King's calſay, or zit the channel.

Item, Gif thair be ony perſoun that has ony biggit land, ſic as cellaris,

cellaris, under the zeird, and the paſſage of thame furth farder than four fute, ſtoppand the channel and calſay.

Item, Gif thair be ony penteiſſis, that is under ſtairis, haldin on the fore-gait, or farder furth nor the law permittis.

Item, Gif thair be ony that haldis ſwine unbund, pollutand the King's gait, or working up of it, or skaithing of thair nichtbouris, or to the deſtroying of thair zairdis and commoun paſture; or gif thair be ony ſwine cruivis biggit on the fore-gait, ſtoppand the ſamin, or doand on it unhoneſtlie.

Item, Gif thair be ony that haldis opin drauchtis uncloſit, throw the quhilk, in time of heit of ſommer, peſtilentious and evil air may ingender, to the greit skaith of the King's lieges; or that haldis thair drauchtis without ony ſype cumand fra thame, ather rinnand to water or well, throw the quhilk the King's lieges takis oft-times greit skaith.

Item, Gif thair be ony perſounis that ſettis furth under the zeird the ſype of thair bark cobill, the draff of thair lit, malt cobill, or lime-pot, or ony ſype of kitching, to the King's water or well, throw the quhilk the King's lieges may oft-times tak skaith, the perrel not being knawin to thame in dew time.

Item, Gif thair be ony that layis furth in the gutteris of the town ony filth, or ſtoppis thame ony maner of way, quhairthrow the filth may not have paſſage, nor the calſay be haldin clene.

Item, Gif thair be ony perſoun that layis middingis on the hie-gait, doand unhoneſtlie to the burgh, quhair it ſould be haldin clene and honeſt, to the paſſage of the King and his lieges.

Item, Gif thair be ony that layis ony red of houſis, or cairnis of ſtanis, or zit lime or ſand, upon the King's gait, ſtoppand the paſſage thairof, langer nor ane zeir and day unremovit.

Item, Gif thair be ony nicht-walkeris uſand to paſs in the burgh under ſilence of nicht, efter that aucht houris be ſtrukkin, and cover-fire rung, checkand and waitand at men's duris and windowis, hearing of thair ſecret commouning, and ſchewand it agane to thair enemies and unfreindis, throw the quhilk oft-times greit skaith may ariſe: Or zit gif thair be ony man paſſand and gangand throw the burgh for ony uther cauſe than the law permittis.

Item, Gif thair be ony perſoun or perſounis, man or woman, lurkand within the burgh, not labourand and travelland for thair living within the burgh, havand na craft to ſuſtene thame upon, bot corruptand and entiſand men's bairnis and ſervandis, gettand and reſſavand thair meill, fiſh, fleſh, breid and aill, or zit ony uther gudis.

Item, Gif thair be ony baik-houſe or brew-houſe, or zit forge and ſmiddie, that has not betwix the rufe-trie of the houſe and the fornax auchtene fute of heicht; be reſſoun that quhair ſic thingis failzies, oft-times greit skaith and fire happinis, throw the quhilk the haill town cumis in perrel of confuſioun and deſtructioun.

Item, Gif thair be ony kill ſituat within ane tenement of the burgh, not beand at ane zaird end, at ane ſecret and deſert place, that, gif it fall happin the kill to tak fire at ony time, the haill town be not in perrel and danger of burning.

Item, Gif thair be ony perſoun that reſſettis and intromettis with ony lipper folk, in time of day or nicht, or zit reſſavis fra thame ony

ony gudis or geir. *Iter. Camer. c.* 28. *Ex lib. Scon. et lib. Balf. fol.* 82. *et lib. Purves.*

C. XXVI. Privilege of Chalmerlane air.

ALL actiounis movit or proponit befoir the Chalmerlane and his deputis, in his air, and pertening to his juriſdictioun, aucht and ſould be thair endit and determinat, and may not thairefter deſcend to ony inferiour Judge. *Iter. Camer. c.* 29. *Ex lib. Scon. et ex lib. Balf. fol.* 82.

Item, Gif ony man be decernit in the Chalmerlane air to pay to ane uther ony ſum of money for debt, or for taxt and ſummit ſkaithis obtenit aganis him, he may not be compellit to pay the ſamin quhill xl. dayis be run furth.

Item, The Proveſt and Baillies of the burgh ſould put to executioun all decretis obtenit befoir the Chalmerlane in his air, and cauſe him that obtenit the decrete to be payit thairof.

Item, Gif ony Baillie of the burgh be challengit or accuſit of ony thing tuiching his office, he ſonld not be compellit to anſwer thairto bot befoir the Chalmerlane. *Iter. Camer. c.* 29. *Ex lib. Scon. et ex lib. Balf. fol.* 82.

C. XXVII. Chalmerlane's juriſdictioun.

ALL reductioun of ſentences and decretis gevin in burrow-courtis ſould be decidit in the ſecund inſtance befoir the Chalmerlane; that is to ſay, takand of *Edinburgh*, *Striviling*, *Lanerk*, and *Linlithgow*, of ilk burgh twa, thré, or four, of the maiſt diſcrete burgeſſis, with lauchful commiſſioun, in proper perſoun, for to compeir at the burgh of *Haldingtoun*, befoir the Chalmerlane, thay beand ſummoundit to that effect, to decide upon the richt or the wrang of the dome that is agane-ſaid: And it is to wit, that ſic ane court, quhair the four burrowis ar all aſſemblit befoir the Chalmerlane, ſtandis to the burgeſſis as ane parliament; and ane decrete gevin thairin, as ane decrete of parliament, makand all thingis lauchful done thairanent. *Mod. ten. cur. c.* 6.

C. XXVIII. The Chalmerlane's unlaw.

IT is ordanit that the King's Chalmerlane ſall have, for his fie and ſuſtentatioun zeirlie, twa hundreth pundis, of eſchetis, unlawis, tollis and cuſtumis of the King's burrowis. *LL. Mal. Mack. c.* 4.

Item, The amerciament or unlaw of the Chalmerlane-court ſould not excede the ſowme of fifty ſhillingis, and to his Clerk twa ſhillingis, and to thair Serjandis of the burgh four penies for ilk perſoun that is unlawit. *LL. Mal. Mack. c.* 4.

Item, The Chalmerlane's Clerk may nocht modifie ony unlaw or amerciament, without ſpecial command of the King. *Iter. Camer. c.* 32. *Ex lib. Scon.*

C. XXIX. Chalmerlane-clerk, and his office.

THE Chalmerlane-clerk ſould be depute and conſtitute be the King, and ſould have na ligue nor band with the Chalmerlane, nor dwell and remane with him, bot ſall be bund and obliſt to the King allanerlie, and ſould ſweir that he ſall do nathing at the Chalmerlane's command in hurt and prejudice of the King; and that he ſall adviſe with his Hienes at all times, and do all thingis pertening to his office, efter his command and injunctiounis.

Item, That he ſall hald the Chalmerlane air in time of ſommer, and not in winter, for eſchewing of greit and ſumtuous expenſis.

Item, The Chalmerlane-clerk ſall carry with him all kind of weichtis and meſouris, and thairwith maiſt ſcharplie examine the commoun weichtis of ilk burgh, and ſé that thay exactlie agré with his weichtis, and be nather heavier nor lichter.

Item, The ſaid Clerk ſall bring and deliver to the King, in writ, the namis of all thame that ar indytit for foirſtalling within ilk burgh.

Item, He ſall bring in like maner to the King in writ all the eſchetis within burgh, in tenementis, or in uther gudis, and the namis of all thame that ar cum in the King's will for thair treſpaſs, togidder with the roll of all domes that is agane-ſaid within burgh, and the namis of the parties. *Iter. Camer. c.* 32, *Ex lib. Scon.*

Anent the lawis of bordouris.

IT is to have in mind, that upon the auchtene day of *December* 1468, Erle *William Douglas* aſſemblit the haill Lordis, frehalderis, and eldeſt bordoureris that beſt knawlege had, at the college of *Linclouden*; and thair he gart thay Lordis and bordoureris bodilie be ſworn, the halie evangel tuichit, that thay leillelie and trewlie, efter thair cunning, ſould decrete, decern, deliver, and put in ordour and in writ, the ſtatutis, ordinances, and uſis of marchis that wer ordanit in *Black Archibald* of *Douglas*'s dayis, and *Archibald* his ſone's dayis, in time of weirfare; and thay came agane to him adviſitlie with thir ſtatutis and ordinances, quhilkis wer in time of weirfare of befoir. The ſaid Erle *William*, ſeand the ſtatutis in writ decreitit and deliverit be the ſaidis Lordis and bordoureris, thocht thame richt ſpeidful and profitabill to the bordoureris; the quhilk ſtatutis, ordinances, and pointis of weirfare he tuke, and the haill Lordis and bordoureris he gart bodilie be ſworn, that thay ſould mantene and ſupplie him, at thair gudelie powar, to do the law upon thame that brak the ſtatutis under-written. *Item*, The ſaid Erle *William*, and Lordis, and eldeſt bordoureris, made certane pointis to be treſſoun in time of weirfare to be uſit; the quhilkis wer na treſſoun befoir his time, bot to be treſſoun in his time, and efter, gif thay wer uſit ather be men or women.

C. I. Intercommouning with *Ingliſhmen.*

IN the firſt, it is fundin and ſtatute, be the law of marchis, actit, decretit, and ordanit, that na maner of perſoun, man nor woman, of ony degré, ſall intercommoun with ony *Ingliſh* man or woman, ather in *Scotland* or *England*, outtane the priſoneris that ſall cum in *Scotland*, without ſpecial licence of the wardane and his deputis, askit and obtenit in time of weirfare, under the pane of treſſoun.

Item, It is ſtatute that na perſoun of the hoiſt in *England* ſall ſteill or paſs ather to foirey or ſpeiking, without ordinance or bidding of the Chiftane.

Item, That na perſoun ſall ſpeik or commoun with *Ingliſhmen*, without leive of the Governour of the hoiſt askit and gevin, under the ſamin pane. *Leg. March. c.* 4.

C. II. Of him quha

ITEM, It is ſtatute, that quhen it happinis that the Wardane, the

the Lieutenant, with ony fellowſhip do paſs in *Ingland*, that quhat perſoun for covetice of gudis, or ſingular profit to himſelf, departis and paſſis fra his fellowſhip, that all the gudis that he happinis to tak ſall be takin fra him, and be ane eſchete, and be the Governour of the hoiſt or companie ſall be diſponit among the fellowſhip, as to thame thinkis ſpeidful; and he ſall be notit as tratour for his deid, and puniſt for opin treſſoun. paſſis fra his companie.

Item, It is ſtatute and ordanit in like maner, that na perſoun, ather with his Lord or maſter, ſall depart fra him in thair furth-paſſing or hame-cuming, without leive of the Chiftane of the hoiſt askit and gevin, under the ſamin pane.

C. III. That all men fecht on fute.

ITEM, It is ordanit, that quhat time it is ſene ſpeidful that the hoiſt licht down and array thameſelfis, that ilk man licht down at commandement, and na man bide on horſe, bot als mony as ar ordanit be the Chiftane; and quha ſa not dois, to be puniſt in like maner as is befoir ſaid: And gif he happinis to win ane priſoner, or gudis, that bides on horſe without commandement, the twa part ſall be his Majeſtie's, and the thrid part the Chiftane's of the hoiſt.

C. IV. Anent arrayeris of the hoiſt.

ITEM, That na man mak obſtacle or letting to thame that ar ordanit to array the hoiſt, and that ilk man ſall anſwer and obey under the ſamin pane.

C. V. Of him quha in time of chais takis ane uther man's horſe.

ITEM, It is ſtatute and ordanit, that gif thair happinis ane chais, ather fleand or followand, quhatever he be that takis his fellow's horſe, gif he winnis ony gudis on him, ather priſoner or uther gudis, he that aucht the horſe ſall have the half of it, and he ſall bring the horſe agane to the ſtake; and failzieing thairof, he ſall be notit as ane tratour, and puniſt: And gif it happinis him to flie on that horſe, als ſoon as he cumis hame, he ſall paſs to the mercat of the ſchire, and proclame him, and ſyne deliver him to the Schiref or Stewart of the land: And gif he dois not this, he ſall be puniſt as ane tratour.

C. VI. Taking of priſoneris is leaſum.

ITEM, Quhen it ſall happin us to win ony feild, quhatever he be that arreiſtis ony priſoner, and then followis off the feild, and he will ſweir, quhen he cumis hame, that he did that for ſaiftie of his priſoner's life, that conditioun ſall be of na valour: And quhatever he be that ſlayis his fellowis-priſoner, fra he be arreiſtit, ſall pay his ranſom to his taker, gif he be of powar; and gif he be not of powar, he ſall die thairfoir.

Item, It is fund ſtatute and uſe of march, that it is leaſum to ilk man to tak als mony priſoneris as he may, baith on fute and horſe, ſwa that he leid thame within the ſtrenth of *Scottiſmen*, and to tak ane taikin of his priſoner with him, that he may be knawin ſufficient, and to leive his taikin with his priſoner; and ſa mony as he takis in ſiclike maner, to be his priſoneris, and the determination thairof to be decidit be the Wardane, or his deputis, gif thair be ony plaintis.

C. VII. Reiving of

ITEM, It is fund, ſtatute, and ordanit, that ony man beand plenteis

uther men's priſoneris. plenteis of reif of his priſoner, or his gudis, ſall find ane borgh in the handis of the Wardane-ſerjand, upon the partie that he is plenteous of; the quhilk partie ſall be arreiſtit to bring the priſoner or the gudis to the nixt Wardane court; and the priſoner thair to be challengit be his partie, and baith thair witneſſis ſall be heard and examinat: And it ſall be at the will and diſcretioun of the Judge, and his ſworn counſal, quhen baith the parties ar heard, to decern and give his decrete, quha has reſſoun to the priſoner or to the gudis: And the partie fundin in the wrang ſall pay x. *lib.* to the Judges.

Item, It is decernit, that gif it happinis ony man to plenzie in the feild to the Chiftane, that his priſoner is reft fra him, als ſoon as he may be gottin he ſall be deliverit to the Wardane or Lieutenant, to be put in evin handis, that nather of the parties induce him to thair will, that it may be determinat and judgit quha has maiſt reſſoun to him.

C. VIII. Contentioun for a priſoner. *ITEM*, It is fund, ſtatute, and ordanit, gif it happinis ane priſoner to be takin, and divers perſounis contendis about him, he ſall be, at the command of the Wardane, deliverit in evin handis, or ellis in the Wardane's handis, at the will of the parties quhilk thay had leiver; and the Wardane ſall gar the priſoner be brocht to the Wardane court, and thair the parties ſall challenge, and he that is fund arreiſter ſall challenge firſt: And gif he has ony *Scottiſmen* to witneſs that he tuke him priſoner, and firſt arreiſtit him, the witneſſis of the firſt arreiſter ſall be of valour, quhat *Scottiſmen* that ever thay be, the arreiſter and his witneſſis beand bodilie ſworn, that thay ſall ſuithſay, but dreid or favour of ony perſoun: And failzieand of this, the actioun of ony uther clamor ſall be put to the aith of the *Ingliſhman*, he beand bodilie ſworn, and in evin handis, that he ſall ſuithſay, outher for ſkaith or profit to himſelf, fraud or favour of ony uther parties.

C. IX. Ranſoming and deliverıng of priſoneris. *ITEM*, It is ſtatute and fund uſe of march, that it is leaſum to ilk man, quhatever he be, that takis a priſoner quha may leid ane hundreth men, he ſall not be him be lettin to borgh, nor zit be ranſomit for xv. dayis in time of weir, but he got leave at the Wardane.

C. X. Taking of priſoneris. *ITEM*, It is ſtatute and fund uſe of march, quhatever he be that ſtrikis down a man aff horſeback in the chais, ſuppois he be zeildin thairefter to ane uther man, or that ſtrikis him down throw juſting of weir, he that ſtrikis him down ſall have his half ranſom, ſwa that it may be provin.

C. XI. Takeris or conceillaris of tratouris. *ITEM*, It is ſtatute and fund uſe of march, that quhatever he be that bringis ane tratour to the Wardane, or his deputis, he ſall have for his reward ane hundreth ſhillingis: And he that puttis him away fraudfullie ſall underly the pane of deid for his doing, like as the tratour ſould have done.

C. XII. In quhat places baillis ſould be put. *ITEM*, It is fund ſtatute and uſit in time of weirfare, anent baillis burning and keiping, for cuming of ane *Ingliſh* hoiſt into *Scotland*, thair ſall ane baill be brunt on *Trailtrow* hill, and ane uther

ther on the *Panchat* hill, and on the *Bait* hill abone the *Hame-endis*, ane on the *Cowdanis* abone *Caſtlemilk*, ane on *Quhitſoun*, ane on *Dryſdail*, and on the *Burraw Skenton* in *Apilgirth* paroche, ane on the *Browan* hill, and ane on the *Bleis*, in the tenement of *Wamphray*, ane on the *Kindal-knok*, in the tenement of *Johnſtoun*, ane on the *Gallow-hill* of *Moffat* paroche; and ſyne on *Nithiſdail*, ane on the *Wardlaw*, ane on the *Rabochtoun*, ane on *Barloch*, ane on the *Pittarra* hill, ane on the *Madow* hill, ane on *Corſwinton*, ane on the *Corſell*, ane on the *Fell* abone *Dowlbark*, and ane on the *Wachtfell*: And to cauſe thir baillis to be kept and maid, the Schiref of *Nithiſdail*, the Stewart of *Annandail*, the Stewart of *Kirkcudbright* in *Galloway*, ſall be debtors; and ſwa quha keipis not the baillis, ſtatutis and ordinances maid in time of weirfare, ſall pay for ilk default ane mark.

C. XIII. Of him that followis not the baill.

ITEM, Quhatever he be, ane hoiſt of *Ingliſhmen* cuming in the countrey, the baillis beand brunt, that followis not the hoiſt on horſe or on fute, ever quhill the *Ingliſhmen* be paſt off *Scotland*, and that thay have ſufficient witneſſis thairof, all thair gudis ſall be eſchete, and thair bodies at the Wardane's will, bot gif thay have lauchful excuſe for thame.

C. XIV. Priſoneris ſould have ane conduct.

ITEM, It is ordanit, gif thair be ony *Ingliſhmen* takin in *Scotland*, thay ſall have na fredome to paſs in the countrey farder than the place of thair entrie, and the ſtraicht way from *Ingland* to the place, on na man's conduct, exceptand allanerlie our ſoverane Lord's, or the Wardane's proper ſeill; and that thay ſall cum on ane uther conduct to the verie day and place of thair entrie and payment: And gif thay happin to be without conduct, or ony *Scottiſman* with thame in name of thair taker, he ſall be priſoner to ony *Scottiſman* may get him.

Item, That na *Scottiſman* may, ſra ony hoiſt be riddin, or reddie to ride, in *Ingland*, let his priſoner paſs hame; or that ane hoiſt of Sutheroun be cum in *Scotland*, and *Scottiſmen* gadderand aganis thame, under the pane of treſſoun.

C. XV. Anent parting of gudis.

ITEM, Quhaever he be that cumis to the hoiſt but bow and ſpeir, and thair be ony parting of gudis, twa of thame ſall be to ane bow part.

C. XVI. Of him quha fleis fra the hoiſt.

ITEM, Quhaever he be fra that thay cum in the feild, that fleis fra the Lord his maſter, and his fellowis, and bides not to the uttermoſt, all his gudis ſall be eſchete, and his perſoun puniſt as ane tratour at the nixt Wardane court thairefter to be haldin.

C. XVII. Reiving of priſoneris, or of gudis.

ITEM, Quhaever he be that reives fra ane man his horſe, priſoner, or gudis, fra time that he be knawin on him, he ſall reſtoir thame agane, and his perſoun puniſht thairfoir as for opin treſſoun.

Here endis the lawis and conſtitutiounis maid be the Erle Douglas.

C. XVIII. Quha ſould paſs to the hoiſt.

IT is ſtatute and ordanit, that all men beand paſt the age of ſaxtene zeiris, and within the age of ſextie zeirls, may be compellit to compeir to ſerve the King's Grace in time of weirfare, and is bund

and obliſt to obey his Grace's proclamatioun maid thairanent, with ſufficient armour and wapinis, according to the avail and quantitie of his landis and movabill gudis. *Leg. foreſt, c.* 68.

Item, It is ſtatute and ordanit that wapin-ſchawing be maid twiſe in the zeir. *Leg. foreſt. c.* 68.

C. XIX. Thay quha cum to the King's hoiſt ſould not ſpuilzie nor reive the countrey-men.

IT is ſtatute and ordanit, that quha cumis to the King's hoiſt or armie, for defence of the realme, ſall be reſſonablie ſervit and obeyit be the indwellaris of the countrey quhairthrow they paſs, in all thingis pertening to thair viveris and ſuſtentatioun, thay payand thairfoir according to the price and mercat of the land and countrey quhair thay paſs: And it ſall not be leaſum to ony of the ſaidis perſounis paſſand to the hoiſt, to tak ony thing without licence of the Baillie, or of the narreſt nichtbouris dwelland in the places quhair thay paſs: And gif the Baillies may not cauſe thame be ſervit and anſwerit for thair ſilver and money, thay ſall tak nathing bot allanerlie thair ſuſtentatioun, and ſall not waiſt nor deſtroy ony landis, gudis or geir, or uther thing, under the colour of buying: And gif thay do utherwayis, thay may be callit and perſewit befoir the Baillie of the ground quhairin the ſaid treſpaſs is committit, or befoir the King's Juſtice, gif thair be na Baillie, as for robberie and reif.

Item, All perſounis ſall cum to the hoiſt weill ſtuffit and furniſht with cariage and victuallis, as thay will be ſervit: And gif ony be of countrey and land far diſtant fra the place to the quhilk he ſould cum, ſwa that he may not bring with him victuallis, he ſall cum weill providit of ſilver and money to buy all his neceſſaris, and ſwa cum in hope to do na injurie to ony perſoun, or to charge and burding the countrey quhair he paſſis, without making of ony payment for ſic thingis as ſall be neceſſar for him in his voyage. *Stat. 1. Ro. Bruce, c.* 3. *Stat. 2. Ro. Bruce, c.* 6.

C. XX. THAT nane paſs in *Ingland* in time of weir. *Ja.* II. *fol.* 36. *act.* 55. 13 *Octob.* 1455. Nor aſſure with thame, *c.* 56.

C. XXI. To remane thair without licence is treſſoun. *Ja.* I. *fol.* 22. *act.* 142. 6 *Mart.* 1429.

C. XXII. ASSURANCE with *Ingliſhmen*, treſſoun. *Ja.* I. *fol.* 24. *act.* 158. 26 *Octob.* 1436.

C. XXIII. THAT na *Scottiſman* ſupplie *Bervick* or *Roxburgh*. *Ja.* II. *fol.* 37. *act.* 57. 13 *Octob.* 1455.

C. XXIV. THAT na man reive na maner of gudis nor priſoner. *Ja.* II. *Ibid. act.* 58.

C. XXV. THAT nane rais a fray in the hoiſt wilfullie. *Ja.* II. *Ibid. act.* 59.

C. XXVI. That the armie of *Scotland* be unhorſit, except greit Baronis.

ITEM, Anent the maner of cuming of all our ſoverane Lord's lieges to weir, horſit or unhorſit, the King's Grace underſtandis the greit skaith, hurt and damnage done in cuming of multitude of horſemen, throw deſtructioun of cornis, medowis, and herrieing of puir folkis; and alſwa the greit impediment maid be thame in

in the hoiſt, quhair that all men fecht on fute; thairfoir has ſtatute and ordanit, that na maner of man have horſe with him, bot be reddie to gang on fute fra the place that it pleiſis the King's Grace to aſſign to the firſt meiting and aſſembling of the armie, except cariage thairof allanerlie: And gif ony man cumis on horſeback, or bringis his horſe with him, except for his cariage, as ſaid is, that he incontinent ſend his horſe hame agane with ane rinnand boy, and with na fenſibill man, or habill of perſoun to beir armis, under the pane of death; providit alwayis, that albeit this act is maid general, the effect thairof ſall not be extendit to Erlis, Baronis, and greit landit men, bot that thay, and ſic utheris as ſall be thocht expedient be the King's Grace, or his Lieutenentis, ſall paſs on horſeback quhairever the King's Grace movis with his armie.

THAT na perſounis cumand to the hoiſt waiſt medowis or cornis, or ſpuilzie gudis. *Ja.* III. *fol.* 65. *act.* 99. 2 *April.* 1481. C. XXVII.

RAISING of bandis of men of weir forbidden, under pane of deid. *Mar. R. fol.* 175. *act.* 10. 4 *Junij*, 1563. C. XXVIII.

FOR hame-bringing and uſing of hagbuttis, *&c. Ja.* V. *fol.* 134. *act.* 73. 14 *Mart.* 1540. C. XXIX.

CASTELLIS upon the bordouris and ſea-coaſt ſould be fortifyit and furniſhit. *Ja.* III. *fol.* 65. *c.* 100. § 2. 2 *April.* 1481. C. XXX.

GARNISONIS to be laid upon the bordouris. *Ja.* II. *fol.* 37. *act.* 61. 13 *Octob.* 1455. C. XXXI.

THAT na *Ingliſhman* cum in *Scotland* without conduct. *Ja.* II. *fol.* 36. *act.* 56. 13 *Octob.* 1455. C. XXXII.

OF wappin-ſchawing, and reddines in weir. *Ja.* III. *fol.* 69. *act.* 106. 24 *Feb.* 1483. C. XXXIII.

GIF ony man intendis to big ony biggingis upon the bordouris of this realme, neir unto *Ingland*, or ony ſtrenth or fortalice, the King and his counſal willis to deſiſt and ceis thairfra; and gif ony thing be biggit, to deſtroy the ſamin, untill his Grace and counſal be adviſit thairwith, and conſider quhidder the ſamin be for the weill of the realme or not, ſen the ſamin ſtandis ſa neir the bordouris, and may turn the realme to hurt and damnage. 6 *Julij*, 1528, *The King* contra *Abbot of* Halirudhouſe, 1 *t. c.* 311. C. XXXIV. Of ſtrenthis bigging on the bordouris.

GIF ony man dwelland upon the bordouris, or in ony uther part of this realme, quhair the bordour lawis has authoritie and effect, makis faith, and ſwearis thameſelfis innocent of the crimes and treſpaſſis that are imput to thame, and bringis uther perſounis to purge thame thairanent; and thairefter thair maſteris cumand ſovertie, and takand the ſamin on thair lawties and honeſties, in preſence of the Wardanis, upon the quhilk the Wardanis takis upon thair honeſtie that ſic perſounis are clene; gif it beis efterwart fund be ane tryal, baith of *Scottiſmen* and *Ingliſhmen*, that the ſaidis perſounis C. XXXV. Purgatioun of thift.

ſounis wer culpabill, and foul of the crimes and treſpaſſis for the quhilk purgatioun was maid, as ſaid is, thay beand ſwa convict, ſall be juſtifyit to the deid thairfoir. 24 *April.* 1500, George *Maſter of* Angus, *in preſence of the Lordis*, 1 *t. c.* 187.

C. XXXVI. Reſtitutioun of the gudis takin in the time of peace.

GIF ony of our ſoverane Lord's lieges takis fra ony ſubject of ane uther realme, in the time of peace, ony ſchippis, gudis or geir, ather be ſea or be land, he is haldin, quhill lauchful weir be proclamit, to reſtoir and re-deliver the ſamin againe, gif he be challengit or followit thairfoir: Bot gif the ſaidis gudis beand unreſtorit, plane weir and hoſtilitie be proclamit and opinlie uſit betwix this realme and the realme quhair the awner of the ſaidis gudis dwellis, the ſamin gudis cumis under abolitioun of the ſamin weir; and all actioun quhilk the ſaid awner micht have had for redreſs and reſtitutioun of the ſaidis gudis, is takin away, and allutterlie aboliſht be the opin weir ſubſequent. And thairfoir he may not, in the time of peace following the ſaid weir, call or perſew for the ſamin; bot the gudis aucht and ſould remane with the taker thairof in all time cuming, as his awin proper gudis; *quia actio ſemel exſtincta non poteſt reviviſcere.* 2 *Mart.* 1550, Mouat *contra* Craufurd. 26 *Jan.* 1563, *The* Ingliſh *Merchandis of* Quhitebie *contra the Admiral of the* Scottiſh *Merchandis. Ult. Julij*, 1564, *inter eaſdem perſonas.* 14 *Julij*, 1522, 1 *t. c.* 373. 816.

C. XXXVII. Furniſhing of the armie.

IT is ſtatute and ordanit, that all Ladies of tierces, conjunctfearis and liferenteris, ſall ſupplie and furniſh the Lordis and Lairdis of the ground to the King's weir, raidis, hoiſtis and armie, efter the rate and quantitie of thair landis. 9 *Jan.* 1532. 16 *Junij*, 1553, Alexander Leſlie *of that ilk* contra Margaret Fraſer.

C. XXXVIII. WAPPIN-ſchawing to be maid four times in the zeir, *Ja.* I. *fol.* 7. *act.* 48. 12 *Mart.* 1424. *Ja.* II. *fol.* 40. *act.* 71. 6 *Mart.* 1457. *Ja.* IV. *fol.* 92. *act.* 53. 18 *Maij*, 1491.

C. XXXIX. THE maner of wappin-ſchawing, and the pane of contraveineris. *Ja.* IV.

C. XL. WAPPIN-ſchawing twiſe in the zeir, and thriſe in the firſt zeir. *Ja.* V. *fol.* 130. *act.* 55. 3 *Decemb.* 1540.

C. XLI. THE namis of thame quha cumis to wappin-ſchawing ſould be put in roll, with the maner of thair armour. *Ja.* V. *fol.* 131. *act.* 58. 3 *Decemb.* 1540.

C. XLII. THE time of premonitioun to wappin-ſchawing. *Ja.* V. *fol.* 131. *act.* 60. 3 *Decemb.* 1540.

C. XLIII. CAPITANES ſould be choſin for inſtructioun of all the lieges to uſe thair armis. *Ja.* V. *Ibid. act.* 61.

C. XLIV. SPEIRIS ſould contene ſax eln of lenth. *Ja.* III. *fol.* 56. *act.* 56. 6 *Maij*, 1471.

ANENT

ANENT the perſounis that ſall be haill harniſht and weill hor- C. XLV.
ſit. *Ja.* I. *fol.* 21. *act.* 134. 6 *Mart.* 1429.

ANENT the graithing of zeamen for weir. *Ja.* I. *Ibid. act.* C. XLVI.
135.

THAT ilk Baron within himſelf ordane his men to be graithit C. XLVII.
as is befoir written. *Ja.* I. *Ibid. act.* 136.

OF ilk burges man havand fiftie pund in gudis. *Ja.* I. *Ibid.* C. XLVIII.
act. 137.

THE maner of harnis, wappinis and armour. *Ja.* V. *fol.* 131. C. XLIX.
act. 57. 3 *Decemb.* 1540.

OF armour conform to everie man's rent and ſubſtance. *Ja.* V. C. L.
Ibid. act. 58.

SCOTTISMEN heand warnit to leive aſſurance with *In-* C. LI.
gliſhmen, and diſobeyand, ſall have na actioun aganis trew *Scottiſ-*
men, for ony wrang done to thame. *Mar. R. fol.* 152. *act.* 12.
1 *Feb.* 1551.

A *Scottiſman* heand ſpuilzeit be *Scottiſmen* and *Ingliſhmen*, has C. LII.
gude actioun aganis the *Scottiſmen*. *Mar. R. Ibid. act.* 13.

ANE aſſurit *Scottiſman* aſſiſtand the *Ingliſh* armie, may be per- C. LIII.
ſewit for all the ſkaith done to *Scottiſmen* unaſſurit. *Mar. R. Ibid.*
act. 14.

GIF ony of our ſoverane Lord's lieges beand aſſurit in the time C. LIV.
of weir, with the enemies of this realme, happinis to be herreit or Of aſſurit men
brunt be the ſaidis enemies, havand *Scottiſmen* with thame in com- ſpuilzeit be
panie, the ſaidis lieges that wer aſſurit, nor thair airis, has na acti- the enemies,
oun aganis the ſaidis *Scottiſmen*, for ony wrang, ſpuilzie or ſkaith havand *Scot-*
done to thame be the ſaidis enemies, nor zit may thay mak ony ceſ- *tiſmen* in thair
ſionar and aſſignay to ony actioun competent to thame thairfoir; cumpanie.
quia non poſſunt plus juris transferre in alium quam ipſi habent. Pen.
Julij, 1552, *Tutor of* Pitcur *contra Lord* Gray, 1 *t. c.* 1144.

GIF ony of our ſoverane Lord's lieges be aſſurit with the ene- C. LV.
mies of *Ingland* in the time of weir, he ſould not be comptit and Aſſurit per-
reknit as ane of the ſubjectis of the ſamin, nor bruik nor joiſe o- ſounis ſould
ny benefice, privilege or immunitie, nor zit has ony actioun to call not injoy the
and perſew, in ony time, for ony wrang, ſpuilzie, or intromiſſioun benefit of the
with his landis, gudis or geir done in the time of his aſſurance. King's lieges.
3 *Feb.* 1558, Patrik Murray *contra* John Maitland, 1 *t. c.* 1222.

Bordour matteris. Of the Wardane.

C. I. The Wardane may deliver the cautiouner for him on quhom a bill is fylit.

BILLIS beand fylit upon ony perſoun dwelland within t boundis and juriſdictioun of ony Wardane, gif ony of t ſoverane Lord's lieges becumis cautioneris or ſoverties, conjunct and ſeverallie, to the Wardanis, for entres of the ſaid perſoun him for his relief, he may tak the ſaidis cautioneris, or ony ane thame, and deliver thame to the *Ingliſhmen* for his relief, and dreſs of the billis fylit upon the perſoun for quhom thay becam cautioneris. 5 *Feb.* 1537, Ninian Liddel *contra Lord* Home, 1 *c.* 493.

C. II. Anent thame that bindis thame to re-enter ane perſoun.

GIF ony perſoun beand juſt priſoner, indweller or liege of a uther realme, be takin be ony of our ſoverane Lord's lieges in tim of weirfare, and thairefter is lettin hame be his keipar, upon a band and obligatioun, or gevin to ony liege of this realme for h re-entrie, at ane certane day, under ane certane pane ſpecifyit thai intill; gif he failzies to enter agane at the day appointit, he that gav and maid the obligatioun in his name may be callit and convict b foir the Lordis of counſal for payment of the ſaid pane. 23 *Fe* 1565, Alexander Home *contra* George Home *and the Gudeman* Humbie, 1 *t. c.* 889.

Item, Gif ony liege of this realme gevis his band to ony u ther, for re-entrie of ony *Ingliſhman* takin priſoner, under an certane pane contenit in the ſamin, and he failzie to enter th ſaid priſoner, he aucht and ſould be condamnit to pay the ſai pane, conform to the ordour and band, notwithſtanding on proclamatioun maid in *Ingland*, that na priſoner enter agan in *Scotland*, under the pane of deith; the quhilk proclamatioun i not ane ſufficient excuſe to the maker of the ſaid band, to ſaif him fra the payment of the ſaid pane, 10 *Feb.* 1546, *Laird of* Blak baronie *contra Laird of* Stanypeth, 2 *t. c.* 172.

C. III. The dewtie and office of the Wardane.

ALL Wardanis are bund and obliſt to expell all theivis, reiveris, and utheris treſapſſouris, furth of his rowmis, boundis and war danrie, and hald thame furth of the ſamin, and ſall anſwer for the inhabitantis and indwellaris of the ſaidis boundis, and keip all and ſindrie our ſoverane Lord's trew lieges skaithles of thame, of all harmis, reifis, ſpuilzies, or ony uther harm or crime to be done be thame, under the pane and perrel of all his landis and gudis.

Item, Quhen ony perſounis within his boundis committis ony ſlauchter, he ſall bring the perſounis committaris thairof to the law, and ather juſtifie thame himſelf, or bring thame to the King's Juſtice, without thay be haiſtelie fugitive, that thay may not be apprehendit; in the quhilk cais he ſall expell thame furth of the landis and boundis of his wardanrie, and tak fra thame thair poſſeſſiounis and gudis, and expell thair wives and bairnis with thame in like maner, and enter uther trew perſounis in thair places.

Item,

Item, For thift, reif, or uther crimes, the Wardane ſall anſwer and be reſponſal to the partie that ſall happin to ſuſtene the skaith, or ellis ſall proceid aganis the committaris of the ſaidis crimes, as is abone written of ſlauchter.

Item, Gif the Wardane deliveris ſufficient pledges within the King's caſtellis, or uther places appointit be his Hienes, or his counſal, to that effect, for everie clan or ſurname, and thair aſſiſtaris; that is to ſay, twa or thré of the beſt of everie ſurname; in that cais he ſall not be haldin to anſwer for the crimes of thoſe ſurnamis, or thair aſſiſtaris; bot the pledges aucht and ſould be puniſt thairfoir, and the Wardane to anſwer allanerlie for the remanent of the boundis under his guydeſchip, reule and cure.

Item, The eſchete of all theivis and treſpaſſouris that are convict of thair movabill gudis, aucht and ſould pertene to the Wardane for his travel and labouris, to be uſit and diſponit be him at his pleaſour in time cuming.

Item, All and ſindrie our ſoverane Lord's lieges within the boundis of the wardanrie, als oft as thay ſall be chargit be the Wardane, or his deputis, ſall reddilie anſwer, obey, ſupplie, aſſiſt, ride and gang with him, for the apprehending and puniſhing of all theives, treſpaſſouris and miſdoaris, or in expelling thame out of the countrey, in maner foirſaid, under the pane of tinſel of life, landis and gudis. 16 *Junij*, 1527, 1 *t. c.* 307.

Item, The Wardane aucht and ſould tak and apprehend all and ſindrie our ſoverane Lord's lieges, turſeand and carryand nolt, ſcheip, horſe or victuallis furth of this realme into *Ingland*, and bring thair perſounis to the King's juſtice to be puniſht thairfoir; and all thair gudis may be eſchete; the ane half thairof to be applyit to the King's uſe, and the uther half to the Wardane, for his panis. *Pen. Julij*, 1516, 1 *t. c.* 375.

C. IV. Wardanis ſould anſwer for the theivis in thair juriſdictioun.

Gif ony man dwelland within the boundis and juriſdictioun of ane Wardane, reivis or ſteillis nolt, ſcheip, or ony uther gudis or geir, fra *Ingliſhmen*, and bringis and drivis the ſamin gudis throw the boundis pertening to ane uther Wardane, and ſa fylis his boundis and juriſdictioun, he may be callit at the day of trewis, and fylit thairfoir, and thair Wardane aucht and ſould mak redreſs to the *Ingliſhmen*, awneris of the ſaidis gudis; and the uther Wardane, within quhais juriſdictioun the ſaidis theivis, reiveris, and ſpuilzearis dwellis, ſall relieve and keip him skaithleſs anent the ſaidis gudis, and anent the freithing and releiving of his men and ſervandis furth of *Ingliſhmen*'s handis, enterit and deliverit be him. 21 *Julij*, 1529, George *Lord* Home *contra* Andro Ker *of* Ferniehirſt, 1 *t. c.* 291.

C. V. The Wardane may, upon invaſioun, garniſh houſis, *&c.*

Gif the enemies of this realme invade the ſamin at ony time, the Wardane fearand that thay ſuppriſe or tak ony houſe or place pertening to ony of our ſoverane Lord's lieges, beand then deſtitute of ſufficient keiparis, may enter in the ſamin houſis, and garniſh thame with keiparis of men of weir, for the defence thairof, tranquillitie of the commoun weill, and ſaiftie of this realme, and lieges thairof; bot nevertheles, he or thay, quha at his command enteris in the ſaid place, ſall be haldin to anſwer for the gudis and

geir that was within the ſamin the time of his intromiſſioun, to the awner thairof; utherwayis he may be callit and perſewit for ſpuilzie of the ſamin. 23 *Julij*, 1558, *Mr.* Johne Steuart *contra* Johne Maxwell *of* Terreglis, 2 *t. c.* 758.

C. VI. FOR keiping of the dayis of trewis. *Ja.* II. *fol.* 29. *act.* 15. 19 *Jan.* 1449. *Ja.* IV. *fol.* 86. *act.* 26. 15 *Feb.* 1489.

C. VII. THE office of the Wardane ſould not be heritabill. *Ja.* II. *fol.* 35. *act.* 45. 4 *Aug.* 1455.

C. VIII. Reule of unwritten pointis of weirfare. *ITEM*, It is ordanit, that all uther thingis that are not put in writ, that are pointis of weir, and uſit of befoir in time of weirfare, ſall be reulit be the Wardane and his counſal, and be the eldeſt maiſt worthie bordoureris, that beſt knawis the auld uſe of marche. *LL. M. c.* 21.

C. IX. Thir are the pointis belanging to the Wardane court. *IMPRIMIS*, Quhatever he be that warnis *Ingliſhmen*.

ITEM, Quha that ſteillis *Scottiſmen*'s gudis, and puttis in *Ingland*.

ITEM, Reſt or ſtollin horſis, or ony uther gudis, in *Scottis* hoiſt.

ITEM, For *Scottiſmen* dwelland in *Ingland*.

ITEM, For ſitting upon particular aſſurance.

ITEM, Supplyaris of thame of *Roxburgh* or *Bervick*, or ony uther of the marchis of *Ingland*, with horſe, harnis, victual, fewal, or ony uther gudis.

ITEM, Of thame that reivis priſoners fra *Scottiſmen*.

ITEM, Of thame that brekis the King's or the Wardane's conductis.

ITEM, Of thame that ſpeikis with *Ingliſhmen*, but leive of the King or Wardane.

ITEM, Of thame that have ſpokin with *Ingliſhmen* in illing of *Scotland* ſpeciallie, or commounlie in treſſounabill manner.

ITEM, Of thame that have gevin red or counſal, or zit perſewit to tak ony of the King's caſtellis.

ITEM, Of *Scottiſmen*, quhen *Ingliſhmen* were bund to ride, that warnit, letting thame to cum quhen *Scottiſmen* wer garniſhed for thame, to be ſtoppit treſſonablie.

ITEM, Of *Scottiſmen* that helpis to bring *Ingliſhmen* out of priſoun, or ony feſtning. *Pag.* 378, *Leg. march. c.* 22.

ANENT

ANENT kirkmen that happinis to be ſlane or die in the hoiſt. C. X. *Mar. R. fol.* 146. *pag.* 1. § 1. 18 *Septemb.* 1547. *Ja.* VI. *fol.* 4. *act.* 11. 7 *Septemb.* 1571.

THE ward, releif, mariage and takkis of thame quha ar ſlane in the King's armie or hoiſt. C. XI. *Ja.* IV. *fol.* 110. *act.* 138. 24 *Aug.* 1513. *Ja.* V. *fol.* 112. *act.* 3. 24 *Julij*, 1522. *Mar. R. fol.* 146. *act.* 5. § 2. 8 *Septemb.* 1547. *Ja.* VI. *fol.* 5. *act.* 11, 12, 13. 7 *Septemb.* 1571.

ITEM, The general act maid in favouris of the airis of thame quhais fatheris, or uther freindis, happinis to be ſlane or deceis in our ſoverane Lord's hoiſt, armie, or general raidis, that thay ſall have thair ward fré; it is not to be underſtuid allanerlie of the landis to the quhilk the ſaid air ſucceidis, as air to his father, or ony utheris his predeceſſouris, bot of all uther landis to the quhilkis he ſucceidis as air to his mother, efter his father or utheris his predeceſſouris deceis in the ſaid feild, as ſaid is: And alſwa, the ſamin is to be underſtuid gif ane marie the heretrix of ony landis, and efter hir deceis bruke the ſamin be the curteſie of *Scotland*, and thairefter happinis to fall in the feild, leivand ane air. 12 *Julij*, 1542, George Drummond *contra Erle of* Athole. C. XII.

ANE man beand ſlané in ony feild, leivand behind him lauchful wife and bairnis, the ane half of his ſteidingis, maillingis and poſſeſſiounis, gif he ony had, ſall pertene to his wife, efter the form of the act maid heiranent, and the uther half ſall pertene to his bairnis, quhidder thay be ane allanerlie or ma. *Pen. Feb.* 1548, Thomſones *contra* Criſtiane Home. 6 *Julij*, 1549, Elizabeth Skene, *dochter to* John Skene, *contra* Elizabeth Forbes, 1 *t. c.* 671. C. XIII. Of thame that deceiſſis in the hoiſt.

ITEM, Ane tak and aſſedatioun ſet and gevin to ane, and to the airis gottin or to be gottin of his bodie, quhilkis failzieing, to his brother, or ony uther perſoun, and it happinis him to be ſlane in ony feild or hoiſt, without airis gottin of his bodie, his wife may not clame ony richt to that tak, bot is excludit fra all privilege grantit to the wives of thame that ar ſlane in the feild; becauſe the ſpecial proviſioun in the ſamin was maid to the brother, failzieand the airis foirſaidis. 6 *Julij*, 1549, 1 *t. c.* 1107.

ITEM, Gif ony man havand ane bare and nakit poſſeſſioun, without ane titill, or zit be ane titill quhilk efterwart is declarit not to be ſufficient, and it happinis him to deceis in the King's hoiſt, armie or ſervice, his bairnis or wife, efter his deceis, ſall not bruke nor hald the poſſeſſioun be virtue of ony act maid in favouris of thame that deceiſſis in the King's armie or ſervice; for gif the huſband had na ſufficient richt quhairby he bruikit the ſaid poſſeſſioun befoir his deceis, his bairnis or wife ſould have na privilege keipt to thame efter his deceis be virtue of the ſaid act. 2 *Mart.* 1561, *Sir* James Balfour, *Perſoun of* Flisk, *contra Erle of* Rothes, 1 *t. c.* 1281.

C. XIV. The form and groundis of the bordour lawis.

THE lawis of marchis, or bordour lawis, betwixt the realm of *Scotland* and *Ingland*, in the time of peace, are commoun a indifferent to the ſubjectis of baith the realmis; the groundis a effect of the ſamin lawis ather being contenit in the contractis a treaties of peace paſt betwixt the Princes, or thair commiſſioneri or then thay are antient and loveable cuſtumis, reſſavit and ſtandi in force as law, be lang uſe, and mutual conſent of the Wardan and ſubjectis of baith the realmis, as fund be experience to be gu and proffitabill for the quietnes of the bordouris, and gude nich bourheid amangis the pepill, inhabitantis of baith the natiounis.

Firſt thairfoir thair is collectit in this diſcourſe ſic thingis as a commandit and allowit be the ſaidis lawis, treaties and cuſtumis, an quhat thingis are prohibite: And nixt, upon attemptatis and wran is happining to be committit, how redreſs aucht to be ſocht an maid, and juſtice miniſtrate, to the puniſhment of offendaris, an ſatisfactioun of complenaris.

C. XV. Ordour in fyling of billis.

IT is deviſit and ordanit, that all complaintis of all attempta within the marchis of *Scotland* and *Ingland*, ſen the begining an acceptatioun of peace, ſall be inrollit be the Wardane of the marc is quhair the complenaris inhabite, and the ſaid roll ſent to the o poſite Wardane, quha ſall be anſwerabill for the ſamin: And t Wardane that ſall reſſave the ſaid roll ſall do his uttermoſt and be endeavour to ſpeir, ſerche, and inquire the treuth and veritie of th attemptatis contenit in the ſaidis complaintis, and to cauſe ſic perſoun is as be thairin complenit upon to be arreiſtit be the Serjandis, anſwer thairupon, gif thay be preſent, immediatlie without dela And gif thay failzie, or it happin thame to be abſent, then thay be referrit to anſwer at the day of the trewis, quhair and quhen th Wardane and the aſſiſe ſall ather fyle the ſaidis billis, or give an uther lauchful anſwer thairto, efter the lawis and cuſtumis of th marchis, quhairof ſax to be of the ſaid Wardane's appointmen and uther ſax to be appointit be the ſaid complenar, or ſic uth perſounis as do follow the bill. And mairattour, it is aggreit, tha ſic billis as have bene or ſall be fylit be ony of the Wardanis, an na lauchful deliverance nor compeirance maid for the ſamin, the Wa dane, at the nixt day of trewis following the fyling of the ſaid billis, ſall mak deliverance for everie bill, ſwa followit of ony o fendar or man, ſic as beis fylit in the ſamin bill, or ellis, for laik ony offendar, to mak deliverance of ſic uther perſoun, be the conſen of the oppoſite Wardane, as he will undertake to be ſufficient fo the bill; the perſoun ſa deliverit to remane with the partie offendi quhill he be fullie redreſt, or utherwayis ſatisfyit, according to ju ſtice, and the lawis of the marchis: And alſwa, that in this form o proceiding betwix the Wardanis, ather Wardane ſall anſwer in lik maner to the uther for fyling of billis, as baith the parties hav cauſe to complene. And gif ane partie ſall have mair cauſe to com plene than the uther, then ſic billis as remanis ſall nevertheles be fu lie anſwerit in form aforeſaid. And alſwa, it is aggreit betwix th ſaidis Commiſſionaris, that billis of complaint of attemptatis tha have bene or ſall be committit during the time of the conventioun of the ſaidis Commiſſionaris, that is to ſay, fra the ſaxt day of *Novem ber* to the ſeiling heirof, ſall be likewayis anſwerit in the form afoi

ſai

ſaid, without followeris. And for als mekill as the ſaidis Commiſſionaris intendis not, by the premiſſis, to mak ony abrogatioun or alteratioun, in time cuming, of the auld lawis, uſis and cuſtumis, in fyling of billis be the Wardanis of baith the realmis, bot that the ſamin ſall remane in the ſamin force and integritie, for the redreſſing of attemptatis committit and done heirefter, as has bene befoir uſit; they do heirby declair the ſpecial ordour befoir devyſit, for the fyling or acquyting of bills, upon the honouris of the Wardanis, ſall onlie extend to ſic billis, contening offences quhilk have bene committit ſen the acceptation of the laſt peace, and befoir the dait of thir preſentis.

C. XVI. Contraverſie for paſturing.

ALSWA, it is farder providit and aggreit be thir preſentis, that gif it ſall happin ony of the Wardanis of the ſaid realmis, in default of knawlege, to acquyte ane bill or billis upon his honour in maner foirſaid, quhilk is indeid foull, it ſall be leaſum nevertheles to the ſaid complenar to perſew ane new bill agane, requiring juſtice to be done to him for the ſaid attemptat, upon better information and knawlege to the ſaid Wardane, or ony uther ſucceiding in that office; and that juſtice ſall be done to him upon his ſaid complaint, be ane aſſiſe, and lauchful pruif to be heard and reſſavit, and thairupon his bill to be fylit or acquyte, efter the cuſtume and lawis of the bordouris heirtofoir uſit, notwithſtanding the ſamin bill was anis acquyte be ane Wardane upon his honour, in form afoirſaid.

C. XVII. Particular deciſioun anent ſcheip ſtollin be *Ingliſhmen* fra *Scottiſmen*.

AND quhair thair was na ſmall contraverſie extendit betwix the inhabitantis of ——— and utheris *Scottiſmen* dwelland neir thairabout, als weill for ſcheip as uther cattel takin the xxiiij. day of *Junij* laſt bypaſt, be *Cuthbert Muſgraif*, *Johne Steill*, and utheris within the realme of *Ingland*, as thay ſuppois; as for uther ſcheip takin in the ſaid moneth be *Thomas Clavering* and utheris, the ſervandis of Mr. *Randolph Gray*, maiſter of the eiſt marchis of *Ingland*, within the realme of *Ingland*, as thay ſuppois, the maiſt part of the quhilk ſcheip and cattel the ſaidis *Scottiſmen* ſuppoſit and alledgit to be takin within the realme of *Scotland*; quhilk contraverſie the ſaidis Commiſſionaris diſcreitlie conſiderit, have amicabillie componit, and ordanit the Lord *Everis*, Wardane of the middle marchis of *Ingland*, to cauſe re-deliver or recompence to the vaolur of all ſic ſheip and cattell as wer takin be the ſaid *Johne Steill* and *Cuthbert Muſgraif*, and thair companie, at that time, extending to the nombre contenit in ane bill, ſubſcrivit be us the foirſaid Commiſſionaris, to be maid to *George Ker* of *Gaitſchaw*, *Richard Dadſon* and utheris, the awneris of the ſamin, on this ſide and befoir the purificatioun of our Lady nixt to cum: And gif ony contraverſie or difference ſall be in delivering of the ſaidis gudis, or the prices and valour of the ſamin, ſuppois thay be not ſa gude as thay wer the time of the taking; that then the ſamin ſall be ordourit, and ſet be Sir *Johne Foreſtar* Knicht, and *Robert Colingwood*, *Ingliſhmen*, and Sir *Walter Ker* of *Ceſsfurd*, and *Sir* John Home *of* Coldingknowis, Knichtis, *Scottiſmen*, indifferentlie appointit be the ſaidis parties: And likewayis, the ſaid Mr. *Randolph Gray*, now Wardane of the eiſt marches, ſall cauſe re-deliverie to be maid of ſheip takin be the ſaid *Thomas Clavering*, and utheris his ſervandis of befoir, in als gude ſtait and valour as thay wer at the time

time of the taking thairof ; or ellis ane ſufficient recompence
the ſamin, on this ſide and befoir the feiſt of *Candelmaſs* nixt e
ſuing the dait heirof ; allowing and rebaiting to the ſaid Mr. *Ra*
dolph, the ſowme of xx. pundis money, in name of pannage,
that the ſaid ſcheip wer keipt and paſturit, as he ſuppoſit, upon h
ſeveral ground, at *Myendrum* : And gif ony contraverſie ſall ari
in the nombre, price or valour of the ſaid ſcheip, for the nomb
the awneris to be ſworn, and the foirſaidis compoſitouris to ordo
the price or valour of the foirſaid ſcheip, as thay ſall think reſſon
bill.

C. XVIII. Fiſching of *Halywell.*

ITEM, It is alſwa farder ordanit and aggreit, that the Lo
Home, his airis and aſſignays, ſall heirefter have, poſſeſs, uſe a
enjoy the fiſching in the water of *Twede*, neir to the caſtel
Norham, callit *Halywell*, efter the form as uther *Scottis* fiſchin
be, or have bene, lauchfullie uſit within this realm, on the ſa
water of *Twede*, without interruptioun or impediment of the Ca
tane of *Norhame*, or ony uther *Ingliſhman* ; ſwa that the ſai
fiſcheris, or ony utheris occupyand the boitis of the ſaidis fiſchin
is, do not procure ony thing to be done, to the damnage, danger,
skaith of the ſaid caſtel of *Norham*, bot onlie to fiſch on day a
nicht in lauchful maner. Mairover, *Richard Bowis* Eſquire, now C
pitane of the ſaid caſtel, ſall, within xl. dayis nixt efter the d
heirof, pay, or cauſe to be payit, to the ſaid Lord *Home*, or his
ſignayis, for the profitis of the ſaidis fiſchingis be him takin
the laſt concluſioun of this peace and trewis betwix the ſaidis real
is, xxxiiij. *lib.* vi. *s.* viij. *d. Sterl.* money. And quhair alſwa th
has bene ſum contraverſie betwix *Alexander Home* of *Manderſt*
and *Johne Selbie* of *Tuyſill*, *Ingliſhman*, for a fiſching, quhilk
ſaid *Alexander* poſſeſt and clamit in the richt of the Prioreſſe
Cauldſtreme, as pertening to that houſe, and the ſaid *Johne Sel*
clamit a part thairof on the *Ingliſh* ſide, as pertening to the to
of *Tuyſill*, it is, upon pruifis and examinatiounis takin thairin
foir the ſaidis Commiſſionris, be thame ordourit and directit, t
the ſaid *Alexander Home* now, as fewar to the ſaid Prioreſſe
Cauldſtreme, and the ſaid Prioreſſe of *Cauldſtreme*, hir ſucceſſou
and aſſignayis, ſall peciabillie uſe, poſſeſs and injoy the ſaid fiſ
ing, callit *Almont-haugh*, as a *Scots* fiſching, without troubill
moleſtatioun of the ſaid *John Selbie*, or ony uther awner, poſſ
ſour, or inhabiter of the ſaid town of *Tuyſill*, ſaifing that it ſall
leaſum to the ſaid *John Selbie*, and utheris havand the ſaid titill
Tuyſill, to uſe and occupy, arrogat and ſtand onlie in the pl
callit *Stelliſpot*, upon the ſouth-ſide of the ſaid water.

C. XIX. Troublance in fiſching.

IT is alſwa concludit and aggreit, that gif ony of the ſubje
of baith the realmis unlauchfullie ſtop, troubill, and mak impe
ment to the ſubjectis of the oppoſite realme, in his fiſching wit
the water of *Twede*, ſwa that thairby he may not uſe his fiſchi
according to the virtue of the trewis, that it ſall be leaſum to
Wardane of the merche quhair the offendar dwellis, to cauſe
tach the offendar : And gif he be fylit with the troublance
impediment making, in maner foirſaid, he ſall be compellit to p
for everie time that he makis impediment to the parties complen

is xx. *s. Sterl.* and to be deliverit thairfoir in the mean time to the partie greivit, unto the time he be ſatisfyit, efter the law of the bordouris.

C. XX. Of ſlauchter, and of negligence of Officiaris thairanent.

IT is alſwa, for the better continuance of the peace and trewis betwix the realmis, aggreit and ordanit be the ſaidis Commiſſionaris, that quhair ony murthour or ſlauchter heirefter happinis to be perpetrate and committit be the ſubjectis of ather of the realmis, that, upon complaint maid to the Wardane of the marchis quhair the offendar inhabitis, like proceſs, anſweris, and examinatiounis, with all expeditioun, thairinto ſall be maid, done, aggreit, and adminiſtrat, as in the treatiſe of peace for ſic attemptatis is providit and aggreit, and according to the antient lawis and cuſtumis of the bordouris, havand experience that the negligent omiſſioun of Officiaris in this punct has bene the occaſioun of ſic greit enormities and diſcord upon the bordouris of baith the ſaidis realmis.

C. XXI Hurting and wounding.

ITEM, It is fardermair aggreit and condeſcendit betwix the ſaidis Commiſſionaris, that heirefter, gif ony of the ſubjectis of ather of the ſaidis realmis ſall unlauchfullie bodelie hurt and wound ony of the ſubjectis of the uther realme, the perſoun or perſounis ſa hurt or woundit ſall mak a bill of complaint upon the parties that ſwa offendit thame, at the day of trewis; and the parties offendaris ſall be arreiſtit, to anſwer to ſic billis, and compellit to anſwer thairunto, efter like maner as uſe is for rebellis, theivis or ſpuilzearis; and ſiclike proceſs and tryal in everie behalf to be had, untill the bill be ather clengit or fylit. And gif the bill for ſic hurtis and woundis be fylit, then the damnage thairof to be ſet and eſtimat be ſax gentilmen of worſchip and gude fame of *Ingland*, to be namit be the Wardane of *Scotland*, and uther ſax of *Scotland* to be namit be the Wardane of *Ingland*, and be the diſcretioun of baith the Wardanis, or thair deputis, then being preſent; and the damnage ſall be ſet and eſtimat to be twiſe doubill, as in the caſe of thift and ſpuilzie is uſit; and deliverance to be maid be the Wardane of the marchis quhair the parties grievit inhabitis, to be keipt be him untill redreſs thairof be maid accordinglie: And gif the partie ſwa hurt and woundit be mutilat of his neceſſar memberis, and the defendar heirupon fylit accordinglie, over and above the recompence in maner foirſaid maid to the partie ſa mutilat, the Wardane quhair the ſaid offendar inhabitis ſall be bund heirby to do his uttermaiſt diligence, without favour, fraud or deceptioun, to apprehend the ſaid offendar, and to deliver him to the Wardane of the oppoſite marchis of ather realme, to be puniſt be him in ſtrait priſſoun, be the ſpace of ſax monethis, for the ſaid offence.

C. XXII. Fire-raiſing.

And gif heirefter ony of the ſubjectis of ather of the ſaidis realmis ſall wilfullie, or maliciouſlie, raiſe fire within ather of the oppoſite realmis, in burning of houſe, cornis, or hay in ſtakkis, the partie or parties ſwa offending, being lauchfullie fylit thairupon, ſall not onlie anſwer the uther partie thairby damnagit, to all his damnage cauſit be the ſaid fire, with a doubill of all his damnages, according to the lawis and cuſtumis now uſit upon the bordouris of baith the realmis; bot alſwa, the Wardane of the marchis quhair

ſic offendar or offendaris do inhabit, ſall do his uttermaiſt diligence, without fraud or deceipt, to apprehend the ſaid offendar, and to deliver him or thame to the Wardane of the marchis quhair the offence was done, to be greivouſlie puniſht and correctit for his ſaid offence, by ſtrait impriſonment, during the ſpace of ſax monethis, over and beſydes the ſatisfactioun of the partie.

C. XXIII. Bauchling.

AND alſwa becauſe that bauchling and reproving at the aſſemblies affixt betwix the ſaidis realmis gevis greit occaſioun of farther troubill and inconvenience, it is aggreit and ordanit betwix the ſaidis Commiſſionaris, be thir preſentis, that na perſoun or perſounis, of ather of the ſaidis realmis, beir, ſchaw, or declair ony ſign or taikin of repruif or bauchling, aganis ony ſubject of the oppoſite realme, unles he be thairunto licenſit be the Wardanis of baith the realmis: And gif ony attempt to do contrare heirunto, the offendar in that behalf to be attachit be the Wardane of the marche, and deliverit to the uther Wardane of the oppoſite marche, to be puniſt be impriſounment at his diſcretioun, be the ſpace of ane moneth; and nevertheles the ſaid offendar to foirfalt and loſe his cauſe and matter, for the quhilk he at ane inconvenient time bauchlit and reprovit; and the uther partie to be thairof acquytit and diſchargit for ever.

C. XXIV. Perjurie.

AND alſwa the ſaidis Commiſſionaris perceaving be experience how that perjurie is now commounlie uſit upon the bordouris, quhilk is the rute and ground of the hinderance and perverting of all juſtice, and the occaſioun and cauſe of greit diſordour and diſcord upon the ſaidis bordours; for the reformatioun quhairof it is aggreit and ordanit, be thir preſentis, that gif heirefter ony of the ſubjectis of ather of the ſaidis realmis acquyte himſelf be his aith, takin in form of law, befoir the Wardanis, or thair deputis, and thairefter be tryit and provin foul or guiltie of the bill quhairof he ſa acquytis himſelf by his aith, that he planelie appeir perjurit to baith the Wardanis, then, over and abone the juſt redreſs and recompence of the partie greivit, the ſaid perjurit perſoun ſall be attachit and takin be the Wardane of the marchis quhair he inhabitis, and deliverit to the oppoſite Wardane of the uther realme, to be puniſt as ane grievous offendar, be ſtrait impriſonment, during the ſpace of thré monethis; and at the nixt day of trewis, efter the ſaid thré monethis ar endit, the ſaid offendar ſall be brocht befoir baith the Wardanis, or thair deputis, and thair opinlie to be denuncit and proclamit ane perjurit man; efter the quhilk time, he ſall not be repute to be a perſoun of farder faith or teſtimonie in ony cauſe or matter. And gif it ſall happin heirefter ony perſoun of ather of the ſaidis realmis, unmeaſurablie or injuſtlie to ſweir the nombre and valour of his gudis to be more or greiter than of treuth thay be, to the great loſs and damnage of the adverſar partie, the Wardanis of baith the realmis, or thair deputis, then being preſent, without ony hinderance, ſtay or delay of juſtice in ony wayis, ſall tak to thame trewlie twelve of the maiſt worſchipfull and credibill perſounis of baith the realmis then being preſent, quhairof ſax to be of the realme of *Scotland*, at the nominatioun of the Wardane of *Ingland*, or his deputis then preſent, and uther ſax of the realme of *Ingland*, to be at the nominatioun

tioun of the Wardane of *Scotland*, or his deputis then preſent; and the ſaid Wardanis, or thair deputis, with the ſaid twelve, ſall have powar, be virtue heirof, to moderat, qualifie or diminiſh the nombre or price of the gudis or cattel ſa overſworn be him as afoirſaid, and reherſit. *Apud Bervick, 4 Decemb.* 1553. *Inter Commiſſionarios, dominum Thomam Cornwallis, & dominum Robertum Bouis, milites pro Anglia; et dominum Robertum Carnegie, et dominum Joannem Bellenden, milites pro Scotia, concordatum eſt ut ſupra, in novem articulis immediate ſupraſcriptis.*

C. XXV. Interchangeing of rollis.

ITEM, It is concludit and aggreit, that redreſs ſall be maid upon all the frontiers of baith the realmis, to the Officiaris thairof *reſpectivè*, everie ane within the boundis of his office, for all ſic murthouris, ſlauchteris, offences, attemptatis, and billis ſignet and ſubſcrivit with ony handis, and deliverit interchangeably, as heirtofoir has bene committit, and be conteinit in certane rollis accordinglie, be ather of the Commiſſionaris, in maner and form as is at mair lenth expreſſit thairin, to the end that be lauchful deliverance of the offendaris, and puniſchment of attemptatis paſt, the trew ſubjectis of baith the realmis ſall have juſt occaſioun to praiſe God, for the mantenance of juſtice and peace, and the wicked, throw feir and terrour thairof, to ceiſe and deſiſt fra farder offending in time to cum.

C. XXVI. Dayis of marchis to be oft keipt.

ITEM, For all attemptatis that have bene committit ſen the penult day of *September* inſtant, 1560, or ſall happin to be committit heirefter be ony of the ſubjectis of ather realme aganis the uther; it is ordanit, that the ſamin ſall be redreſt be the Officiar or Wardane of the offendar, according to the lawis, treatiſe, and ordinances thairof befoir maid, and now preſentlie inſtitute, and that with all convenient ſpeid, without delay; for the performance quhairof, the Wardanis muſt keip thair dayis of marchis oft, and in proper perſounis, ſa far as may be, and not be thair deputis, without greit and juſt occaſioun, nor ſall not ſlip or diſappoint ony day of trewis appointit, ſwa that, at the leiſt, everie moneth ane day of trewis be keipt at everie marche be the Officiaris thairof, and oftner, gif neid require; and at evrie ſic meiting to keep thair ſitting fra day to day, untill all former complaintis complenit upon be ordourit and finallie anſwerit, according to the treatiſe; ſwa that the ſaid Wardanis ſall not have reſpect to mak redreſs of valour for valour, or bill for bill, bot for all offences complenit upon to thame, for the zeal of juſtice, and as thay will anſwer to thair Princes, and in the preſence of God at the latter day, quhen all ſall give ane account of thair miniſtratioun.

C. XXVII. Aith of the Wardanis.

ITEM, That everie Wardane, at the firſt day of trewis heirefter to be haldin be him, ſall, in the preſence of the oppoſite Wardane, and inhabitantis of baith the marchis, mak ane ſolemn aith, and ſweir be the heich God, that regneth abone all Kingis and realmis, and to quhom all Chriſtians aucht obedience, that he ſall, in the name of God, do, exerciſe and uſe his office, without reſpect of perſounis, malice, favour or offence, diligentlie and undelayit, according to his vocatioun and charge that he beiris, under

der God and his Prince, and ſall do juſtice upon all complaintis preſentit unto him, upon ony perſoun complenit upon under his reule; and that quhen ony complaint is referrit to him, to ſpeir, fyle, and deliver upon his honour, he ſall ſearche, inquire, and redreſs the ſamin at his uttermaiſt powar; and that gif it ſall happin him in ſa doing, to acquyte and abſolve the perſounis complenit upon, as clene and innocent, zit gif he ſall be ony wayis get ſuir knawlege of the verie offendar, he ſall declair him foull of the offence, and mak lauchful redreſs and deliverance thairof, albeit the verie offendar be not namit in the complaint: And this aith of the Wardanis not onlie to be maid at the firſt meiting heirefter to enſue, bot alſwa to be maid everie zeir anis, as is afoirſaid, at the firſt meiting efter *Mid-ſommer*, to put thame better in remembrance of thair dewties, and to place the feir of God in thair hartis.

Item, All ſic perſounis as ſall be adjoinit to the Wardane, or be choſin upon ony inqueſt or aſſiſe, for the trying of complaintis, ſall mak in like maner ane ſolemn aith for the dew executioun of thair dewties.

C. XXVIII. Fyling on honour.

ITEM, Albeit we, for the mair ſpeidie redreſs and furtherance of juſtice, do heir ſtatute and ordane the Wardanis to proceid upon all complaintis or attemptatis, be ſpeiring, fyling and delivering upon his honour, togidder with ſax uther honeſt and famous men of that wardanrie, adjoinit to him for the tryal thairof to be namit be the oppoſite Wardane; zit intend we not thairby to mak derogatioun or aboliſhing of the lawis and cuſtumis of the marchis of auld ordanit and obſervit, bot als weill permitting the parties greivit to follow thair lauchful tred with hound and horn, with hoy and cry, and all uther accuſtumat maner of freſh perſute, for the recoverie of thair gudis ſpuilzeit, as utherways to uſe the ordour and tryal of ane lauchful aſſiſe and inqueſt, adding of lauchful pruif, to be uſit at the electioun and choiſe of the partie complenand.

C. XXIX. Quhair billing is without cauſe.

ITEM, Becauſe it had bene perceavit of lait, ſen the ordour was begun be the Wardanis to ſpeir, fyle, and deliver upon thair honouris, that ſum ungodlie perſounis have maid complaint, and billit thair gudis loſt, quhair nane wer takin away fra thame, and ſa troublit the Wardanis, cauſing thame to ſpeir and ſearch for the thing that never was done; it is thairfoir ſtatute and ordanit, that in times to cum all ſic perſounis ſa troubling the Wardanis by billing and complaining without cauſe, ſall be puniſt as heirefter followis, that is to ſay, he ſall be deliverit to the oppoſite Wardane, to be impriſonit and pynit for his offence, at the diſcretioun of the ſame Wardane quhom he ſa uſit and troublit.

C. XXX. The landis-lord or Baillie ſould anſwer for his man.

ITEM, It is thocht expedient and neceſſar, for the preſervatioun of the ſubjectis in gude ordour and obedience, that everie of the Prince's Officiaris, of baith realmis, ſall tak ſuir and ſic ordour, within the boundis of thair offices, that everie Lord, awner, poſſeſſour, Officiar, and Baillie of the offendar, be arreiſtit; and warning and knawlege beand gevin of the offence to the Lord, awner, poſſeſſour, Officiar and Baillie, thay ſall indevour thameſelfis

ſelfis, to the uttermaiſt of thair powar, to mak the tenentis and inhabitantis of the ground to appeir and be anſwerabill beſoir thair Wardane to ony complaint, ſwa that the Wardane thairby may be abill to do juſtice, and mak lauchful ordour and redreſs to the complenaris, according to the treatiſe of peace: And gif it ſall happin the Lord, awner, poſſeſſour, Officiar, or Baillie, to be fund negligent and culpabill heirin, it ſall be lauchful for his awin Wardane to charge him with the redreſs of the tenentis offence, always exceptit that he ſall not ſuffer deith for the ſaid offence committit be his tenent.

C. XXXI. Aganis recept of fugitives.

ITEM, It is thocht expedient, neceſſary, and aggreit upon, that everie Wardane, within his awin juriſdictioun *reſpectivè*, ſall tak care and reule upon the inhabitantis under him, for to keip thame under dew obedience, giving thame ſa ſtrait command and charge as thairunto appertenis: And gif it ſall happin ony perſoun or perſounis to be diſobedient, eſcaip, run away, and be fugitive fra ony of the ſaidis Wardanis, the Wardane ſa diſobeyit ſall certifie the Wardane foiranent him, requirand him to tak, apprehend, and deliver the offendar with all poſſibill ſpeid; quhilk Wardane, ſwa requirit, ſall be bund, not onlie at the uttermaiſt of his powar, to ſerche for, apprehend, and deliver the offendaris, beand within his juriſdictioun, bot alſwa ſall mak proclamatioun throuchout his wardanrie, be the ſpace of ſax dayis efter, of the ſaid fugitive; and alſwa ſall certifie the uther twa Wardanis of that realme, to proclame the ſaid fugitive throuchout all the boundis of thair wardanries, within the ſpace of ſax days efter thay be certifyit in maner foirſaid, to the end that nane may pretend ignorance thairof, and excuſe thameſelfis thairby, quhen thay ſall be chargit for thair wilful recept of the foirſaid fugitive ſwa proclamit: And gif the ſaid fugitive ſall efter that be keipt, reſſavit, aydit or comfortit be ony ſubject of that realme, the ſaid ſubject ſall be deliverit to the Wardane complenand, and ſall have the ſamin puniſchment that was dew to the fugitive, in cais he do not preſent and deliver the fugitive to ſuffer for his awin offence.

C. XXXII. Recept of fugitive's gudis.

ITEM, Gif it ſall happin the foirſaid fugitive to flie with his gudis, and carie thame unto the oppoſite realme, the Wardane thairof delivering the fugitive to be puniſht for his offence, ſall retene the gudis to his awin uſe for his labour: And gif the fugitive be not apprehendit, then the gudis to be reſtorit to the Wardane of the realme thay come fra, and to be gudis raveſt as unlauchful recept aganis the peace.

C. XXXIII. Wardanis to concur aganis fugitives.

ITEM, It is aggreit, that gif the fugitives of baith the realmis ſall joine or keip togidder, or gif ony Wardane of ather realme ſall require the uther Wardane of the oppoſite realme, or ony of thame, to tak or ride upon the rebellis of baith the realmis, or of ather realme, that then the Wardane, or Wardanis, ſa requirit, ſall, with reſſonabill and convenient powar, be aiding and aſſiſting to the ſaid purpoſe, with ſic convenient nomberis, and at ſic dayis and places as be the ſaidis Wardanis ſall be aggreit upon.

C. XXXIV. Nane to give advertiſement to fugitives.

ITEM, Gif ony perſoun ſall give knawlege or warning to ony fugitives of the cuming or purpoſe of the ſaid Wardanis for thair apprehenſioun, quhairby ony ſic rebel or fugitive eſcapis, that then everie ſic offendar be deliverit to the Wardane complening, to be impriſonit for the ſpace of zeir and day, and to pay a fyne to the valour of all his gudis, and farder to be puniſht to the deith, gif the ſamin be fund expedient to the Wardanis of baith the realmis, for his offence.

C. XXXV. Unlauchful impediment making to the Wardane of the oppoſite marche.

ITEM, Gif ony perſoun of ather realme ſall cum within the uther realme, to mak ſturt, raiſe fire, bear armour, or with force mak ony impediment to the Wardane of that realme, in the execution of his office, the perſoun ſwa doand ſall be reputit publick offendar aganis the treatie of peace, ſwa that gif he ſall happin to be ſlane, hurt, or apprehendit be the Wardane of that realme quhair he committit the offence, the ſamin ſall be lauchful, without ony challenge or clame of the Prince or Officiar of the countrey fra the quhilk he came: And gif it ſall happin the ſaid offendar to return unto his awin countrey efter the committing of the ſaid offence, it ſall be lauchful to the Wardane offendit to bill for him; and beand fund foul of the crime, he ſall be deliverit to the Wardane quhom he offendit, to be puniſht be him at his diſcretioun, and as ane ſubject of that realme quhair he offendit.

C. XXXVI. Followand of tred.

ITEM, Gif it ſall happin the Wardane of ather realme, for the apprehending of fugitives, or puniſhing of offendaris, be execution of juſtice, to perſew ony fugitive or offendar throw the realme quhairin he bearis reule unto the marche, and the fugitive, or the offendar to flie into the oppoſite realme, it ſall be lauchful to the ſaid Wardane to perſew the chaſe in hot tred, until ſic time and place as fugitive or offendar be apprehendit, and to bring him agane within his awin juriſdictioun, to be puniſht for his offences as apperteineth, and without ony let, troubill or impediment to be maid or done unto him be ony of the inhabitantis of that realme quhairin he perſewis: And gif ony perſoun or perſounis ſall mak ony reſiſtance, let or impediment, to the ſaid Wardane, in the aforeſaid perſute, he ſall be billit for and deliverit to the Wardane quhom he offendit, to be puniſht for his offence, at the diſcretioun of the ſaid Wardane; and in the followand of the ſaid chaſe in maner foirſaid, it is thocht expedient, and ordanit, that the perſewar ſall, at the firſt town he cumis by, of the oppoſite realme, or to the firſt perſounis he meiteth with, give knawlege of his chaſe, and require him to go with him, and aſſiſt him in the ſaid perſute.

C. XXXVII. Offence done in followand the tred.

ITEM, Gif it ſall happin the ſaid Wardane perſewar, or ony of his companie, to do injurie, or unlauchful harm, within the oppoſite realme, in the time of thair being thairin, the offendar ſall be deliverit unto the oppoſite Wardane, to be tryit of the offence, and puniſht thairfoir, at the diſcretioun of the ſaid Wardane, and uther twelve honeſt men of that realme, to be nominat be the oppoſite Wardane.

C. XXXVIII. Prices appointit for avoiding of perjurie.

ITEM, For avoiding of perjurie heirtofoir committit in the valuing of cattel, and for a greiter terrour to the wickit, it is aggreit and

and ordanit, that the ſingil valour, utherwayis callit the principal, for attemptatis committit ſen the tent day of this inſtant, and heirefter ſall be eſtimat and judgit as heirefter followis; that is to ſay, everie ox abone four zeiris auld, xl. ſhillingis *Sterling*; and everie kow abone four zeiris auld, xxx. ſhillingis *Sterling*; everie uther ox abone twa zeiris auld, xx. ſhillingis *Sterling*; everie uther beiſt under twa zeiris auld, x. ſhillingis *Sterling*; everie auld ſcheip, vi. ſhillingis *Sterling*; and everie ſcheip, hog, iij. ſhillingis *Sterling*; everie auld ſwine, abone ane zeir auld, vi. ſhillingis *Sterling*; everie zoung ſwine, ij. ſhillingis *Sterling*; everie goat abone ane zeir auld, vi. ſhillingis *Sterling*; everie zoung goat, ij. ſhillingis *Sterling*; and everie doubill to be valuit efter the rait of the ſingil.

C. XXXIX. Labouring of ground in the oppoſite realme.

ITEM, Gif ony ſubject of ather realme ſall manure, occupie, or ſaw with corn, ony ground within the oppoſite realme, it ſall be lauchful to the awner of the ground, or Wardane, to deſtroy the ſamin, gif he think ſa convenient, or ellis to mak bill or complaint thairupon to the oppoſite Wardane: And gif the partie be fylit, he ſall foirfault his corn to the complenar, and ſall pay four times the value of the corn ſawin, and farder ſuffer impriſounment for the ſpace of thré monethis.

C. XL. Foul thryſe, maid pane of deith.

ITEM, For ſa mekil as it has appeirit be experience of times paſt, that theives and evil doaris have not ceiſſit nor forborn from committing of offences and attemptatis aganis the treatiſe of peace, albeit thay wer compellit to mak redreſs, be payment of the principal, with twa doubillis; it is be this preſent treatiſe ſpeciallie contractit and aggreit, that fra hencefurth, gif it ſall happin ony of the ſubjectis of ather realme to be fylit upon billis for thré ſeveral offences and attemptatis, to be committit heirefter aganis the peace and amitie, that for the thrid fault he ſall incur the pane of deith, as ane commoun offendar aganis the lawis of the marchis; ſwa that, attour the ſatisfactioun or redreſs of the attemptatis, quhilk be payment of the ſingil and twa doubillis to the partie complenar, the Wardane of the aforeſaid commoun offendar ſall, to the uttermoſt of his powar, ſearch to tak and apprehend the ſaid offendar, and bring him to the nixt day of trewis, and deliver him to the oppoſite Wardane, for to be execute to the deith, ſwa that be his exempill all utheris ſall tak feir to offend or violate the amitie betwix the twa realmis; provydit alwayis, that the intent of this article is to be takin, that the ſecund of the afoirſaid thré offences ſall be underſtuid to be committit efter the offendar be anis fund foul of the firſt offence; and the thrid offence to be takin ane offence to be committit efter the offendar be fund foul of the ſecund offence.

C. XLI. The complenar may bill befoir quhat Wardane he pleaſis, ſa being he fyle the marche quhair he billis.

ITEM, For the mair ſpeidie furtherance of the trew man to reſſave his gudis fra the robber, ſpuilzear, or receiptar thairof; it is aggreit, that gif it ſall happin the inhabitantis of ony of the marchis to commit ony attemptat within the limites of ony uther marche, and ſa fyle the uther marche, it ſall be lauchful to the partie greivit for to bill for the offence, ather befoir the Wardane of the marche quhair the offendar dwellis, or quhair the gudis remanis, or befoir the Wardane of the marche fylit, at his pleaſour and choiſe; and

and baith the ſaid Wardanis ſall be bund to mak him lauchful anſwer and redreſs upon his complaint.

C. XLII. Paſturage and parkage.

ITEM, Albeit that in ane treatie and indenture maid at *Bervick* upon the fourt day of *December*, the zeir of God 1553, betwix the Commiſſionaris of baith the realmis, it was aggreit and eſtabliſht, that the inhabitantis of baith the realmis ſould feid and paſture thair cattel within the limitis and boundis of thair awin landis, upon pane imputit to the offendar thairof willinglie or accuſtumablie depaſturing and feiding his cattel and ſcheip within the boundis of the uther realme, be payment of ane penny *Sterling* for everie cattel, or nolt, at the firſt fault; and for everie ſcheip, ane *Scottiſh* penny; and be iterating of the offence, to doubill the pane of the parkage, or poindage, untill ſic time as the poindage for everie nolt ſould extend to twa ſhillingis *Sterling*; and for everie ſcheip, vi. pennies *Sterling*; as mair at lenth is expreſt in the ſaid treatiſe: Zit now, upon divers reſpectis, it is farthermair aggreit and concludit, that this additioun ſall be addit thairunto; That gif it ſall happin the cattel or ſcheip of the ane realme to be ſtalf-hirdit, or to remane depaſturing upon the ground of the oppoſite realme, be the ſpace of ſax houris in ane day, it ſall be lauchful to the awner of the ground ſa depaſturit, or to the Wardane or depute of that marche, for to tak and apprehend the ſaid cattel or ſcheip, as foirfaultit and loſt, to his awin uſe, without ony redreſs to be maid thairfoir. And for avoiding of all contraverſie, it is aggreit, and thocht convenient, that the Lord or awner of the ground ſa depaſturit, or the Wardane, quhen ony of thame will proceid to the apprehending and eſcheiting of ony gudis ſa depaſturing, that he ſall tak with him, of his awin countrie, four or ma honeſt and credibill perſounis, unſuſpect, to be preſent with him, to ſee that executioun be dewlie maid, all fraud, malice and guyle removit and ſet apart: And for cattel and ſcheip remaning be ſchorter ſpace than the foirſaid ſax houris, we aggrie, and think meit, that the aforſaid ordour maid and eſtabliſhit at *Bervick* ſall be uſit and obſervit, with this additioun alſwa, That in cais the keiparis of the cattel ſa depaſturing the ground of the oppoſite realme, or ony uther for or with thame, will not permit the awner of the ground, or Wardane, to uſe the ordour of parkage or poindage eſtabliſht in the ſaid indenture, bot will mak let, troubill or impediment, aganis poinding or keiping of the cattel, untill thay be redemit be paying of the poindage; in that cais, the cattel or ſcheip ſall be thairby lauchfullie takin and foirfaultit to the uſe of the awner of the ground, or Wardane, for the contempt and reſiſtance maid aganis the ordour of juſtice. And alſwa, for the pruif of this apprehenſioun and poinding, or for the nombre and quantitie of the gudis apprehendit and poindit, and for the time of the remaneing of the cattel upon the ground, we will, that the ſamin be referrit and tryit be the aith of the Wardane, or his depute, or be the apprehendar thairof, togidder with ſax uther honeſt men of that realme, to be ſchawin and declarit upon thair faith and honouris, and thoſe ſax to be namit be the oppoſite Wardane.

C. XLIII. Perſounis deliverit ſall not eſcaip.

ITEM, Becauſe it has oft-times happinit, that the offendar fylit in

in billis being deliverit to the oppoſite Wardane, for redreſs of the attemptatis committit be him, wald mak reſiſtance to thame that led, or ſould leid him away, and ſuddenlie eſcaip, or return to his awin countrey, quhairby, in ſa doing, baith the parties laikis redreſs, and troubill aryſis betwix the companies being togidder of baith the realmis at dayis of trewis: For ſtaying quhairof, it is now aggreit and ordanit, that the offendaris ſa deliverit ſall quietlie paſs and remane with the partie to quhom thay are deliverit, during all the time of the ſaid aſſemblie, and twa houris efter thair departure: And gif the ſaid offendar ſall do the contrare heirof, he or thay ſall be puniſht be deith, or utherwayis, at the diſcretioun of the Wardanis, as brekar of the aſſeurance. And this to have place for the offendaris that are not deliverit to be put to deith: For ſic perſounis as ſould be execute be deith, we will, that ſtrait ordour, hold and keiping, ſall be uſit unto thame, untill juſtice ſall be executit.

C. XLIV. Uniformitie of executioun amang the Wardanis.

And finallie, becauſe in times bypaſt the lawis of marchis, making of redreſs, and puniſhment of offendaris, has not, as ſaid is, bene ſa diligentlie execute as appertenit, bot rather the ſamin abuſit, everie Wardane having different form and maner of proceiding fra the uther, ſum redreſſing with ſingill and twa doubillis, ſum redreſſing with the ſingill onlie, ſum indifferentlie with a low price and valour of gudis, and utheris with a heicher price; ſum permitting the partie to value and eſteme, as weill his cattell and ſcheip, as all his uther gudis ſpuilzeit, be his aith, and ſum be the contrare; and ſa have different cuſtumis at ſindrie marchis, quhilk was altogidder inconvenient, to the offence of God, and diſhonour of the Princes, ſa to have in ane realme, and under the obedience of ane Prince, ane different maner and form of judgment; thairfoir it is now preſentlie heir ordanit and concludit, in the name of baith our Princes, that everie ane of the aforeſaid Wardanis ſall heirefter keip, obſerve, and execute his office, according to the treatiſe of peace, and of theſe articlis and utheris heirtofoir paſt amangis the Commiſſionaris of baith the realmis, not contrariant heirunto; and ſall uſe one form of judgment, and executioun of juſtice, according to the ſaid loveabill lawis, and to the cuſtume of the marchis heirtofoir uſit, quhairby theives and evil doaris may be puniſht, trew and obedient ſubjectis may be mantenit to live in quietnes, under the protectioun of thair Prince and Wardane, and ſa God may be glorifyit over all. *Acta erant hæc* xxiij. *die Septembris*, A. D. MDLXIII. *inter Henricum Scrope militem, Joannem Foreſtar militem, Thomam Gargrave militem, et Joannem Rocbie legiſperitum, Commiſſionarios pro Anglia; et Joannem Maxwell de Terreglis militem, et dominum Joannem Bellenden militem, Clericum juſticiariæ, Commiſſionarios pro Scotia.*

Of taxatioun.

C. I. Kirkmen and colleges fré,

ANENT horning upon kirkmen for taxt. *Mar. R. fol.* 167. *act.* 29. 20 *Junij*, 1555.

Item,

and conjunct fearis bund to pay taxatioun.

Item, Taxatiounis ordanit to be raiſit for ony cauſe upon puir and miſerabill perſounis, thay aucht to pay na part thairof, quhidder thay dwell within burgh or outwith the ſamin.

Item, Quhen ony taxatioun is ordanit to be raiſit, all Ladies tiercearis, conjunct-fearis, or liferentaris, ſould pay thair part of the ſamin, efter the rate and quantitie of thair tierce, conjunct-fie, or liferent. 5 *Mart.* 1533, 1 *t. c.* 418.

Item, It is ſtatute and ordanit, that all Proveſtis, Maiſteris, Regentis, and uther ſtudentis, incorporat, makand actual reſidence, and under diſcipline, conform to the law of the facultie, within ony univerſities within this realme, ſall be fré in all time cuming, fra all taxatiounis and impoſitiounis to be raiſit be our ſoverane Lord and his counſal, for quhatſumever cauſe or cauſis. 10 *Novemb.* 1524, *Univerſitie of* Sanctandrois *contra the King's Theſaurar*, 1 *t. c.* 639.

The ſea lawis collectit furth of the actis of parliament, the practiques, the lawis of *Oleron*, and the lawis of *Wisbie*, and the conſtitutiounis of *Francois* King of *France*, *annis* 1543. 1557.

C. I. Of the mak- and of ſhippis.

BARONIS and Lordis havand landis on the weſt ſea, and on the north, ſould have galayis. *Ja.* I. *fol.* 21. *act.* 140. 7 *Mart.* 1429.

C. II.

THAT Lordis, Baronis, and burrowis, gar mak ſchippis, buſches, and greit pinckboatis with nettis, *Ja.* III. *fol.* 57. *act.* 60. 6 *Maij*, 1471. In the quhilkis all idill men ſould labour. *Ja.* IV. *fol.* 98. 26 *Junij*, 1493. *Ja.* IV. *fol.* 104. *act.* 105. 11 *Mart.* 1503. *Ja.* V. *fol.* 120. *act.* 19. 7 *Junij*, 1535.

Of the maſter and ſhipmen.

C. III. The maſter may not ſell the ſhip.

GIF ony man be maſter of ane ſhip, pertening to ane awner, or divers and ſindrie awneris, and the ſhip paſſis furth of this realme, and cumis to *Burdeaulx*, or to *Rochel*, or to ony uther place, to be frauchtit, the maſter may not ſell the ſchip, except he had command of the awneris thairof: Bot gif he have miſter of expenſis, he may lay in wad ſome of the cabillis, with adviſe of his fellowis within ſhipboord. *Ship-lawis*, *c.* 29. & 26.

C. IV. Of mariners diſobeyand the maſter.

THE maſter of ane ſhip ſould be honourit be his ſervandis and marineris: And gif ony of thame be rebelland aganis him, or diſobeyand, he ſall tak the towel or boord-claith away that is befoir the mariner, or he put him out of the ſhip: And gif he offeris to mak ane amendis to the maſter, at the ſicht of his fellowis and maitis that are at the tabill, he ſall be heard, and admittit to do the ſa-

ſamin: And gif the maſter will not reſſave mendis fra him, bot will put him out, he may follow the ſhip for his hire, als weill as gif he had remanit thairin, and ſould have als gude wages as gif he had remanit and paſt in the ſhip, and amendit his treſpaſs at the ſicht and aggriement of his fellowis: And gif ſa beis that the maſter takis not in a mariner, als gude as he quhom he did put out, and ocht happin to the ſhip bot gude, the maſter is bund to reſtoir the ſhip, and mak an amendis for the gudis, gif he be abill to do the ſamin. *Kintor. c.* 14. *Ship lawis, c.* 12. *&* 39.

C. V. Shipmen ſould not paſs out of the ſhip, without the leive of the maſter.

GIF ane ſhip paſs fra ane ſteid to ane uther, with hir * charge, or without hir charge, the ſhipmen, or marineris, ſould not paſs out of the ſhip bot with thair maſter's leive: And gif thay do uther-ways, at thair cuming agane to the ſhip, thay ſall amend the ſamin: Bot gif the ſhip wer in ſic ſteid that ſhe wer feſtnit with ſuir feſtnings, *viz.* with twa or thré cabillis, the ſhipmen, efter that thay have done the ſamin, may paſs furth of the ſhip without the maſter's leive, leaving ſum of the marineris to keip the ſhip and gudis, and ſall return be time to the ſhip: And gif thay tarry lang, thay aucht to mak amendis, gif thay have quhairwith. *Kintor. c.* 7. *Ship lawis, c.* 5, 20, 30.

* *al.* cariage.

Item, Ane ſhip beand in ony ſtrange countrey, or ſic place quhair the ſhip or gudis may, be ſuddane ſtorm, or uther aventure, be in peril, it is defendit, that na man quhilk takis hire and ſureing tak upon hand to depart fra the ſhip, and ly upon the land on the ſhore, but the maſter's licence, under the pane of ane doubill mendis. And attour, that na man tak upon hand to carry away the flote-boat fra the ſhip to the ſhore, under the ſamin pane, for divers inconveniences that may cum thairthrow to the ſhip and merchandice in wanting of the ſaid flote-boat. *Wisbie, c.* 5.

C. VI. Of ſhipmen takand ſuddane ſeiknes within ſhip.

GIF ſeiknes cumis ſuddenlie to ony ſhipman doand his ſervice or office, he may not ly langer in the ſhip, bot the maſter is haldin to gar have him to land, and gar get him ane houſe and ane reſſet, or ludging and chamer, and to find him ſic meit as quhen he was of gude health in the ſhip, togidder with ane woman or man to keip him: And gif he wald have ony uther kind of meit, the maſter is not obliſt to give the ſamin; and the ſhip ſould not tary and abide him, bot may paſs away quhen wind and weather is gude: And gif he that was ſeik convaleſcis, he ſall have his hire, repayand and rebateand the expenſis made on him the time of his ſeiknes: And gif he dies, his wife, bairnis, or nixt kinniſmen, ſould have the ſamin. *Ship lawis, c.* 22.

C. VII. Ane mariner may not be takin out of a ſhip for debt.

ITEM, Quhen ane maſter is readie with his ſhip to depart and ſail fra hame to ane uther port, and thair is ſum of his childer auchtand ſilver in the town or countrey quhair thay ar, the creditor may not tak the mariner that is his debtor furth of the ſaid ſhip fra his maſter for the debt: Bot gif he has ony gudis and geir within the ſaid ſhip, thay may weill be ordanit to be compryſit and gevin to pay the ſaid debt, be the aithis of ſworn perſounis, ſa far as is knawin, or may be provin ſufficientlie auchtand; or his hire that the awner has in his handis, may be arreiſtit and ſtopt for pay-

payment to be maid to his creditouris: And gif thair be nather hire auchtand, nor zit has he ony geir in the ſhip ſtreinzieabill, the maſter may not want his man, for that micht be the tinſel of his voyage; thairfoir the ſaid maſter ſall bring the ſaid debtour hame, gif God will, and at the end of his voyage, as pertenis to him, in cais he have na gudis to pay the ſaid debt with, ſall deliver him, be authoritie of the Judge, to anſwer his creditour, conform to the law. *Wisbie, c. 6.*

C. VIII. How ſhipmen, beand hurt, ſould be ſuſtenit.

ITEM, Gif ony ſhipman that is hyrit with ane maſter of a ſhip, paſs furth of the ſhip without his licence, and in ſtrife and troubill with ane uther is hurt and woundit, the maſter is not haldin to haill him, or to purvey for him, bot may expell and put him out of the ſhip, and hyre ane uther man in his ſtead: And gif he gevis mair hyre to him that is hyrit nor he ſould have gevin to him that is hurt, he that is hurt is haldin to pay the ſamin, gif the maſter may find ony gudis or geir pertening to him: Bot gif the maſter ſend ony ſhipman or mariner in ony ſervice of the ſhip, and he that is ſent happinis to be hurt thairthrow, he ſall be haillit be the maſter upon the coſtis of the ſhip. *Ship lawis, c. 21. & 31.*

C. IX. Of ſhipmens meit within the ſhip, and of thair tarying without ſhip.

GIF ony ſhip happinis to be at *Burdeaulx*, or ony uther ſteid, the ſhipmen may bear furth of the ſhip ſic kitching as uſe of the ſhip is, *viz.* twa of the marineris may beir to ſchoar ane meſs, or ane half meſs of meit that is cauld, with als meikle breid as he may gudelie eat at anis; bot he ſall not beir furth of the ſhip ony drink: And gif the maſter beand on land ſendis for drink to the ſhip, he ſould have the ſamin; bot he ſould not tarie lang to ſtop or tyne the hour of the ſhip: And gif he cumis not at time, and thairby ony skaith happinis, he is bund and obliſt to pay the ſamin: And ſiclike, the marineris that paſt furth of the ſhip ſould return and cum aboard agane; for gif ony damage happinis throw thair lang tarying, thay are haldin to amend the ſamin. *Ship lawis, c. 10. & 44.*

C. X. Of paying of hyre to ſhipmen.

GIF ony ſhip cumis in ony ſaiftie or feſtning with hir charge, and the ſhipmen wald have thair hyre, gif thair be ony that has na bed, nor ſhip claithis, nor kiſt, in the ſhip, the maſter may hald his hyre; for na mariner ſould leave the ſhip until he cum to the end of his voyage; or gif he paſs away, the maſter is not bund nor obliſt to furniſh him, nor pay his hyre. *Ship lawis, c. 9.*

C. XI. Shipmen's hyre ſould be augmentit according to the voyage.

GIF the maſter of ane ſhip hyris marineris, ſum upon thair awin finding and ſuſtentatioun, and ſum upon his coſtis, to ony heavin or town, and it happin that the ſhip can find na fraucht to go quhair ſcho was frauchtit to, and ſwa is conſtranit to go farder, the marineris quha ſould find thameſelfis ſould paſs forwards upon thair awin coſtis; bot the wages of thame that wer hyrit upon the maſter's coſtis ſould be augmentit, kenning be kenning, and courſe be courſe, efter the rate of thair hyre, until thay cum to the port of diſcharge: And gif thay gang not ſa far as thay wer hyrit to, thair wages ſall be diminiſht and retreitit; and nevertheles thay ar bund

bund to bring the ſhip agane to the place quhair thay brocht hir fra. *Ship lawis, c.* 10.

C. XII. Of ane mariner not keiping his promiſe.

ITEM, Quhair ane skipper, or awner, hyris ane ſteirſman, pilot, or boatſwain, or ony uther hyreman for ane voyage, ilk ane of thame *reſpectivè* is haldin to hald furth the ſaid voyage for thair part, according to thair promiſe: And gif ſa be that ony of thame keip not his conditioun, as ſaid is, then, and in that cais, he that is hyrit ſall render agane to the conducer the haill hyre that he was conducit for, and ſall give thairto alſwa of his awin proper gudis half als mekle money as he ſould have had, or was promiſt to him be the conducer. *Wisbie, c.* 1.

C. XIII. Of ane mariner that is hyrit with twa maſteris.

ITEM, That na maſter, awner, nor uther perſoun, ſould hyre ane man that is hyrit be ane uther perſoun of befoir, or reſſavit be him in his ſervice, nor zit entice him to leave his awin maſter; quhilk gif ony mariner happinis to do, he ſall be haldin and compellit to obſerve and keip the firſt promiſe, and to ſerve his firſt maſter and conducer, and accompliſh with him the voyage appointit: And for eſchewing of the greiter inconvenientis, and puniſhment of ſic perſounis as makis doubill conditiounis, and hyris thameſelfis to twa ſindrie maſteris, for thair miſdeid or faill, it ſall be leaſum to the firſt conducer, at the end of the ſaid voyage, to give him meikle, or little, or nane of his hyre that he was conducit for, and that bot as the conducer pleaſis; becauſe that be richt and reſſoun he that committis ſic ane offence aucht to tyne his hyre and proffit, as ſaid is. *Wisbie, c.* 2.

C. XIV. Of ane mariner that is not qualifyit or ſufficient.

ITEM, That na maner of perſoun, mariner, boatman, or of uther office within ſhip, tak hyre, or mak conditioun thairfoir with ony maſter or uther, except he be able and qualifyit thairfoir: And gif ony beis knawin doand the ſamin, and is fund inſufficient and not able to do the thing thay tak upon hand, gif the ſamin can be provin be twa or thré unſuſpect in the ſhip, the conducer ſall have the haill hyre agane, and half als mekle of his or thair awin proper gudis pertening to him or thame, as ony of thame ſould have had *reſpectivè* of hyre. *Wisbie, c.* 3.

C. XV. Of diſcharging or putting away of marineris.

ITEM, Gif in ony haven ane ſhip be laidnit, the maſter may not put away ony of his marineris, bot gif he pay to thame thair half hyre: And gif the ſhip paſſis furth of the haven or port, and the maſter diſcharges or puttis ane of thame away, he ſall pay to him his haill hyre, ſwa being that thair be na fault fund that may be ſufficient for the quhilk he may be diſchargit or put away. *Wiſbie, c.* 4.

C. XVI. Quhairin the Pylot is obliſt.

ITEM, Quhair ane Pylot is hyrit upon ſimple conditiounis, to ſail ane ſhip to ane port, he bringand hir with God's grace to the raid, then he is quyte of his charge: Bot gif he be not obliſt, be conditioun making, to bring hir to hir louſing place, and it happin that thair lyis in the ſamin port quhair ſhe ſould louſe, divers ſtanes, blind craigis, or uther perillis, the Pylot aucht to bring the ſhip of the quhilk he has care, upon his guyding, into the port ſaiflie; and

ſcho being within the haven, the maſter is obliſt to cauſe the marineris to ſearch and ſé quhair the ſhip ſould ly ſaiflie, but danger; for then the peril of the ſhip lyis to his charge, and not to the Pylot: And the maſter aucht to ſee the ſhip tyit and and beiled, quhairthrow the ſhip and merchandice may not be put to ony danger or skaith: And gif it happinis the ſhip or gudis to cum in ony danger in the maſter's default, for not doing of the ſamin, or throw putting furth of inſufficient towis, then he is bund and obliſt to upſet the skaith, ſa far as he is worth, or may be able to pay; for in this cais the Pylot is na farder obliſt, bot has done his dewtie, and aucht to have his hyre, conform to his conditioun; and thairefter the maſter and marineris ſould give attendance to thair ſhip. *Wisbie, c.* 9. *Ship lawis, c.* 11. *c.* 46.

C. XVII. Pane of ane ignorant Pylot or leidiſman of a ſhip.

GIF ony leidiſman undertakis the leiding and convoy of ane ſhip to ony ſteid, town or place, and the ſhip periſh throw his default, and the merchandice incurris skaith thairthrow, he is bund and obliſt to reſtoir the damnage, gif he has quhairwith; and gif he has not, may loſe his heid thairfoir: And gif the maſter, or ony of the marineris or merchandis, dois ſtrike off his heid, thay ſall not be callit nor perſewit ony mair thairfoir: Bot thay ſould firſt, and befoir thay do the ſamin, tak cognitioun gif he be reſponſal in gudis or geir, and able to mak ane amendis, or not. *Kintor. c.* 24.

C. XVIII. Quha ſould pay the ledmannage.

ITEM, Quhair ony debait or queſtioun happinis anent the paying of ſteirmen's fie of ſhippis, and the merchandice be paſſand to *Burdeaulx* or thairby, it pertenis to the merchandis to pay the ſamin quhill the ſhip be throw the narrow ſeas, and the maſter ſould pay the remanent, except thair be ane plane conditioun maid be the charter partie to pay the haill ſteiriſmen's feis; for conform to thair appointment the parties obliſt mon keip thair conditioun. *Ship lawis, c.* 6. *Wisbie, c.* 8.

Anent frauchting of ſhippis.

C. XIX. THAT na ſhip be frauchtit without a charter partie. *Ja.* III. *fol.* 48. *act.* 17. *ult. Jan.* 1466.

C. XX. OF Ferriaris that takis doubil fraucht. *Ja.* III. *fol.* 83. *act.* 112. 24 *Feb.* 1483.

C. XXI. Of portage and frauchting of ſhippis.

GIF ony ſhip cumis to *Burdeaulx*, or ony uther ſteid, with hir charge, and is thair deliverit and louſit, the maſter ſould ſay to his fellowis, Will ze fraucht be zourſelfis, or be allowit at the fraucht of the ſhip? that is, to be at zour awin proviſioun. Thay muſt anſwer quhat thay will do. Gif thay tak it at the fraucht of the ſhip, thay ſall have as the ſhip ſall have: And gif thay fraucht be thameſelfis, thay ſould fraucht it in ſic ways that the ſhip be not taryit thairby: And gif it chance ſa that thay find na fraucht, the awner is not to be blamit thairfoir. Ilk ſhipman ſould ſhaw the maſter that maner of weicht thay tak in for thair portage: And gif thay pleaſe, thay may take in meit for ilk ane of thame, with ane

tun

tun of water: And gif in time of ſtorm ony gudis or geir happinis to be caſtin, the ſamin ſall be comptit for ane tun of wine or uther gudis, pund to pund, quhen thay cum in rekning. *Ship lawis, c.* 8: *c.* 42.

C. XXII. Of him that keipis not paſtioun in frauchting of ſhippis.

GIF the maſter frauchtis or lettis to hire his ſhip to ane merchand, and ſettis a certane term within the quhilk the merchand ſould laidin, and be readie to depart: And gif the merchand failzie in keiping of conditioun, and thairthrow the maſter and his marineris are ſtayit, and abides be the ſpace of twelf dayis, or fiftene dayis, or mair, the merchand is haldin to mak the maſter ane amendis; of the quhilk amendis the marineris ſould have the feird part, and the maſter the uther thré partis; becauſe the maſter findis thame thair expenſis and coiſtis. *Kintor. c.* 22.

C. XXIII. Of the fraucht of ane brokin ſhip.

GIF ane ſhip beand laidnit to depart for ony place, and it happinis that ſcho, in in hir voyage, befoir ſcho cumis to hir diſcharge, periſh, rive, or wrak be ſtorm of wether or utherwayis, without the maſter's default, the maſter, marineris, and gudis, all or part being ſaif; the merchandis, gif thay ask or require thair gudis or geir, ſould have the ſamin, gif the maſter pleiſis, thay payand the fraucht, as gif the ſhip had maid the voyage, kenning be kenning, and courſe be courſe, and may paſs out thairwith into ony uther veſſell: Bot the maſter, gif he pleiſe, may mend the ſhip, gif ſcho may be eaſilie mendit, and utherwayis he may hire ane uther ſhip, to finiſh and compleit his voyage: and ſwa the maſter ſall have the fraucht as gif all the gudis had bene ſaifit, and the ſamin fraucht ſall be comptit and reknit, pund be pund, with the gudis quhilk wer ſaif, to pay the coiſtis maid in ſaifing of the ſamin gudis: And mairover, gif the maſter and merchandis do promiſe to ony perſoun the thrid, the half, or ony part of the gudis that ſall happin to be ſaifit, for ſaifing thairof, the ſamin promiſe ſould be keipt: And gif na promiſe or conditioun be maid as ſaid is, or utherwayis, the Juſtice of the countrey, the Admiral may tak cognitioun quhat panis and travel thay have takin in ſaifing thairof, and conform thairto may cauſe thame be rewardit. *Kintor. c.* 4.

Anent laidning of ſhippis.

C. XXIV. Shippis ſould be laidnit according to thair birth.

ITEM, It is ſtatute and ordanit be our ſoverane Lord, and his Lordis of counſal, that becauſe thair has bene great skaith and hurt done in times bygane to his Majeſty's lieges, aganis the commoun weill of this realme, throw the overlaidning of ſhippis paſſand furth of and cumand to this countrey with merchandice, throw the quhilk ane quantitie of gudis has bene caſtin and ſpilt, and divers ſhippis periſht and tint; that na Skipper, maſter or awner of ane ſhip, paſſand furth of, or cumand in to this our ſoverane Lord's realme, at ony port or portis thairof, fuir nor laid thair ſhippis farder nor thay may gudelie beir; and that thay fuir nor ſtow ony merchandice upon the over loftis of thair ſhippis, without thay indent with the awneris of the ſhippis and gudis, and tak thair writing and charter partie with the ſaidis gudis, to paſs upon the

the adventure of the awner of the ſamin; and gif theſe gudis be caſtin, na man to have the peril thairof bot he that aucht the ſamin: And gif the ſaidis Skipperis, maſteris and awneris of the ſaidis ſhippis, do ony thing in the contrare of this ſtatute, the ſamin ſall be upon thair adventure, and thay ſall ſtand full debtouris to the parties that has the gudis caſtin or ſpilt, and for the skaith ſuſtenit, without ony skat or lot with the gudis that beis uncaſtin. *15 Feb. 1507. 1 t. c. 287.*

C. XXV. The maſters of ſhippis, and merchandis, befoir thair laidning, ſall ſchaw to the Admiral, or his deputis, thair gudis and merchandice.

ITEM, Becauſe divers abuſes may be, and ar committit be the maſteris and marineris of ſhippis, and alſwa be merchandis, caryand and beirand away out of the realme forbiddin gudis and merchandice, departing and making their voyages commounlie in time of nicht, not ſchawand to the Admiral nor his deputis, thair charge, waires, gudis and geir; it is ſtatute and ordanit, that the ſaidis maſteris of ſhippis, and merchandis, ſall exhibite and ſchaw, befoir thay be laidnit, or charge thair ſhippis, in the ſamin place quhair thay laidin, to the Admiral, or his deputis, all and haill the gudis, geir, and merchandice quhilkis thay purpois and intend to cary away, to be ſene and conſiderit be the Admiral or his Officiaris, gif thay be forbiddin gudis or not: And quha failzies, and happinis to be diſobedient to exhibite and ſchaw the waires and merchandice in maner abone ſpecifyit, ſall be puniſt be the Admiral, or his Officiaris of admiralitie, be corporal punitioun or amendis of bodie, or utherwayis, efter the exigence of the cauſe. *Act.* 41.

C. XXVI. Of gudis tint in taking or winding.

THE maſter of the ſhip ſould ſchaw the merchandis the taikillis, or his windis and his cordis; and gif thay ſé that thay ſould be mendit, the maſter is haldin to mend thame: For gif ane tun or pype be tint in the winding or heiſing, in fault of the cordis, in time of laidning or louſing, the maſteris and marineris amangis thame ſould pay the merchand thairfoir; and the maſter aucht to pay efter as he aucht to tak for the unlaidning; and the unlaidning to be ſet firſt to recover the loſs, and the reſidue to be partit amangis thame: Bot gif the maſter neglect or failzie to ſchaw the taikillis or the cordis to the merchandis, and thay brake, he is bund and obliſt to recompenſe the damnage: Bot gif the marineris ſay that the cordis wer gude, and the gudis or wine be ſpilt, thay ſall pay to the merchand. *Ship lawis, c. 25, 33, & 36.*

C. XXVII. Of wine ſpilt within ſhip.

GIF ony wines, beand ſtowit be the ſhipmen within ſhip, takis skaith, without knawlege of the maſter of the ſhip, without ſtreſs of wether, and the merchand ſayis that the wines wer diſturbit and ſpilt on the maſter's behalf; gif the maſter will ſweir, with twa or thré of his fellowis, that thair wines wer not warrit be thame, thay ſall paſs quite; bot gif thay will not ſweir, thay ar haldin to reſtoir the tinſel thairof; for the maſter is obliſt to ſé, that all the gudis be keipt ſtallit and ſtowit as thay ſould be, befoir thay paſs out of the haven.

Item, Gif in the winding of wines it chances that the marineris leive ane pype or uther veſſel opin, or has not weill feſtnit it within the ſhip, and thairthrow it ſpillis, and fallis upon ane uther, quhairthrow thay, or ather of thame, is ſpilt, marrit or hurt, the ma-

maſter or the marineris ſould ſatisfie the merchandis thairfoir, effeiring to the price for the quhilk the reſt is ſauld: Aud the awner of the ſhip ſall tyne nathing thairby; becauſe it was the fault of the maſter and marineris in not feſtning the pipe. Bot the maſter ſould have the fraucht for the pipe or pipes ſpilt or hurt, as ſaid is. *Kintor. c. 26. Ship lawis, c. 4.*

Anent making of ſail.

THAT na ſhippis ſail without our ſoverane Lord's cocquet. *Ja.* VI. *fol.* 3. *act.* 8. 26 *Aug.* 1571. C. XXVIII.

How mekle gudis ane merchand ſailing ſould have. *Ja.* I. *fol.* 7. *act.* 41. 12 *Mart.* 1424. C. XXIX.

QUHAT men ſould ſail in merchandice. *Ja.* II. *fol.* 41. *act.* 75. 6 *Mart.* 1457. *Ja.* III. *fol.* 47, & 48. *act.* 14, 15. *ult. Jan.* 1466. C. XXX.

THAT na man ſail in merchandice without half a laſt of gudis. *Ja.* III. *ibid. c.* 16. & *fol.* 78. *act.* 130. 1 *Octob.* 1487. *Ja.* V. *fol.* 122. *act.* 27. 7 *Junij*, 1535. And that thay ſail not in contrare the actis maid of befoir. *Ibid.* C. XXXI.

THAT na merchandis ſall paſs to *Brugis* with ſtaple gudis. *Ja.* III. *fol.* 48. *act.* 19. 12 *Octob.* 1467. C. XXXII.

LICENCE to merchandis to paſs to *Middilburgh*, *Ja.* III. *ibid.* *act.* 20. C. XXXIII.

THAT merchandis ſail to *Rochell*, *Burdeaulx*, and *France*. *Ja.* III. *ibid. act.* 21. C. XXXIV.

IT is leaſum to ſail to *Flanderis* twiſe in the zeir. *Ja.* V. *fol.* 124. *act.* 34. 7 *Junij*, 1535. C. XXXV.

ANE merchand frauchtis ane ſhip with hir charge till the recept, and the ſhip is reikit to the ſea, and paſſis furth to ane uther haven, and lyis thair, abyding the wind, ſwa lang, that money and ſilver failzies the maſter, and equipage; the maſter, that wantis ſilver, or ony uther neceſſare, may ſend to his awin countrey for the ſamin, bot he ſould not tarie thairfoir, gif wind and wedder ſervis, to mak ſail: And gif he lettis or bydis, he ſall pay the skaith to the merchandis: And gif he has not ſtuff nor viveris, he may tak of the wine, or uther merchandice and gudis, and ſell the ſamin for viveris; and quhen the ſhip cumis to the richt diſcharge, the wine, or the uther gudis that the maſter ſwa has takin, ſould be pryſit, efter the rait as the reſidue thairof ſall be commounlie ſauld, and nather mair nor leſs; and the maſter is haldin to pay the merchand for the wine or uther gudis that he ſauld, effeirand to thair price at the quhilk thay ſell the reſt: In like wayis the maſter ſould have the C. XXXVI. Of ane ſhip readie to ſail, that wantis viveris.

fraucht of the gudis and wine quhilk he ſauld as ſaid is. *Ship lawis, c.* 15. & 45.

C. XXXVII. The maſter ſould ask counſal in making of ſail.

THE maſter ſould ask counſal at his fellowis in making of ſail: And gif ſum of thame ſayis that the wedder is gude, and ſum ſayis the contrare, the maſter ſould accord with the maiſt part: And gif he dois utherwayis, and ocht cum to the ſhip bot gude, the maſter ſould pay the skaith, gif he has quhairwith. *Ship lawis. c.* 17. *c.* 27.

Anent caſting of gudis and ſea-wrak.

C. XXXVIII. Of caſting of gudis in time of ſtorm.

GIF chance cumis, that the ſhip may not eſcaip but caſting of gudis, be reſſoun of ſtorm of wether or utherwayis, the maſter of the ſhip ſould ſchaw the merchandis the peril, and thay ſould grant and conſent to the caſting throw adventure; the quhilk gif the maſter dois, he is clear, however it fall out efter: And gif thay grant not to the caſting, nevertheleſs he may caſt als mekle as he thinkis gude; and quhen he is cum in ſaiftie to land, he ſall ſweir, with thré of his fellowis, on God's halie dome, that he did not the ſamin but for ſaiftie of the ſhip, and of the uther gudis that ar zit in hir, and of the men; and then the gudis, being wines, or uther gudis, that ar caſtin, ſall be pryſit and eſtimat efter the valour of the gudis or wines that are ſaif; and quhen thay are ſauld, thay ſall be dividit, pund be pund, among the merchandis; and the maſter aucht to divide and rekin the ſhip, or the fraucht, at his choyſe and optioun. And for recovering of the damnages, the merchandis ſould ilk ane have ane tun fré of fraucht, gif thay helpit thameſelfis weill on the ſea, in the peril of caſting or ſtorm, as thay ſould do: And gif thay did not behave thamſelfis as gude men, thay ſall have nocht, and the merchand ſall be trowit heiranent be his aith. *Ship lawis, c.* 23. & 34.

C. XXXIX. Of hewing of the maſt.

GIF it happinis that the maſter of the ſhip behoves to hew his maſt throw evil wether, he ſould, befoir he do the ſamin, call the merchandis that aucht the gudis, gif ony of thame be thair, and ſchaw thame that thay mon of neceſſitie hew the maſt, for ſaiftie of the ſhip and thair gudis: And gif it ſwa fallis that thay hew thair maſt, or cuttis ony cabill, and tynes or leaves behind thame the anchor or cabill, thair ſhip and thair gudis ſall be pryſit and caſtin, pund be pund, as uſe is of gudis caſtin in ſtorm of wether; and quhen the ſhip is cum ſaif to hir diſcharging place, the merchandis ilk ane ſould pay thair rait, without delay, befoir the gudis be louſit out of the ſhip. And gif the maſter tarie be reſſoun of thair debait, and perceiveth laikage of wines or uther gudis, he aucht not to part with the gudis untill he have his fraucht thairfoir, as gif the tunnis had bene full, and na laikage had bene: And gif the ſhip be on ane hard faige, the maſter ſould gar the ſhipmen amend it incontinent, that the ſhip tak na skaith: And gif ony debait beis among the ſhipmen for thair gudis, the maſter ſould with diligence, gar the ſamin be amendit ſufficientlie within ſhipbuird, and mak thame gude freindis ilk ane to utheris, as thay wer of befoir; bot ma-

marineris ſould not part away befoir he have his fraucht of the gudis for the quhilk thay ar in debait. *Ship lawis, c.* 24, & 35.

ITEM, Gif ony ſhip tine be ſtorm of wether, or, the gudis and geir being thairin, the maſt failzie, or ony uther thing, throw uther miſchance in the voyage, the merchandis are not haldin to pay ony thing thairof, nor to ſcat and lot thairfoir; bot gif it happin for the ſaifrie of the gudis and ſhip, or, in cais of neceſſitie, maſtis be hewin, or gudis be caſtin, in this cais the ſhip and gudis ſall be taxt at the ſhip's price, or the fraucht of the ſhip to contribute with the merchandis gudis, to pay the ſkaith of the ſhip, geir or gudis caſtin, like as the ſaidis gudis, be gude eſtimatioun, micht have gevin, and thay had cum to the mercat, thair price principal to be comprehendit amangis the haill merchandice, and ſhip graith to be reſtorit agane as gude as thay wer. *Wisbie, c.* 7. C. XL. The merchandis ar not obliſt at all times to ſcat and lot.

GIF ane ſhip be brokin in ony land or ſteid, the ſhipmen and marineris are haldin to ſaif als mekle of the gudis as thay may do; and gif thay ſwa do, the maſter of the ſhip ſould give thame thair coſtis reſſonabill to gang to land, gif thay have ſaifit mekle that the maſter may do it; and the maſter may lay in pledge ſum of the ſaif gudis to ſum honeſt men for thame, or he may borrow thame ſilver, gif thay nane have, quhill thay return hame in thair awin land: And gif thay help not the maſter in ſaifing of the gudis foirſaid, he is not haldin to lend thame ony thing; for in this cais thay have tint thair hire. *Ship lawis, c.* 18. & 28. C. XLI. Marineris ſould help to ſaif the gudis.

ITEM, Quhen ane ſhip is brokin, the maſter may not ſell the taikill of the ſhip without licence or command of the awneris, bot ſould ſurelie keip the ſamin in ſaifguard quhill he knaw thair will thairanent; and gif he utherwayis do, he is haldin to mak amendis thairfoir: And ſiclike, quhen the ſhip is tint, the ſhipmen may not ſell the taikill of hir without licence or commandment of the maſter or awneris of the ſhip, bot ſould keip all alſweill as thay may: And gif thay do utherwayis, thay ſould mak ane amendis, gif thay ocht have. *Ship lawis, c.* 18. & 28. C. XLII. The maſter or marineris ſould not ſell the taikilling of ane brokin ſhip.

GIF twa ſhippis or veſſellis ar partneris, or fellowis, in taking of hering, makrellis, or uther fiſh, and it is aggreit to part the gain and winning betwix thame, the ane ſould lay as mony nettis and ingynes as the uther for taking of the fiſh: And gif it chance that the ane of thame periſh, with men, ingynes, nettis and uther gudis, and the uther eſcaip and cum to ſchoar, the freindis of thame quha are periſht ſould have part of the gain that that ſhip quhilk is ſaif has maid, togidder with the part of the ingynes and fiſh, effeirand to that quhilk ſould have pertenit to thame quha are deid; in the quhilk, faith ſall be gevin to the aith of thame quha are eſcapit; bot of the ſhip and veſſel thay ſould have na part. *Kintor. c.* 25. C. XLIII. Of twa ſhippis beand partneris.

IT is ſtatute and ordanit, that gif ony ſhip, galzeoun, or uther veſſel, happinis to brek, and ony perſoun, mail or femail, or ony dog, cat, or beiſt that was in hir, cum living and quick to the land, the C. XLIV. Of ſea-wrak.

the ſamin ſhip, or uther veſſell, ſall not be wrak, bot the gudis and geir that wer thairin ſall be ſaiſit and keipt, at the ſicht of the Schiref, or Coroner, or of the King's Baillies or Officiaris, and ſall be deliverit in keiping in the handis of the indwellaris of the town quhair thay wer fund, ſwa that gif ony clame thame within zeir and day, and preivis the ſamin to be his or his maſter's, and that thay did periſh in his poſſeſſioun and keiping, the ſamin ſould be reſtorit and deliverit to him without delay: And gif na man challenge thame within time and ſpace foirſaid, thay ſould pertene to the King, and be appryſit be the Schiref or Coroner, or be the King's Baillie, and deliverit to the indwellaris of the town, quha ſould anſwer thairfoir to the King's Officiar: And quha dois in the contrare, and beis convict thairof, may be put in the King's priſſoun, quhill he be releivit thairfra be the King, and mairover ſould pay the damnage and skaithis. And gif ony man or Baillie dois in the contrare of the premiſſis, without conſent of his maſter or Lord, and is convict thairof, he ſall anſwer thairfoir, gif he has quhairwith: And gif he has not, his Lord is haldin to give and deliver his ſaid Baillie's perſoun to the King. And quhair the wrak ſould pertene to ony uther than the King, he aucht and ſould have the ſamin in maner abone ſpecifyit. *Leg. Foreſt. c. 57.*

C. XLV. Ship-brokin gudis that are not juſt wrak ſould be reſtorit to the awneris.

GIF ony ſubjectis of ony Prince confederate happinis to be ſhip-brokin in ony part upon the coaſtis of this realme, and ony gudis and geir quhilk wer thairin, not beand juſt wrak be the lawis of this realme, be apprehendit upon the ſtream, or utherwayis efter that the ſamin is driven to the land, be ony of the lieges of this realme, the perſounis intromettouris thairwith aucht and ſould reſtoir and deliver the ſamin agane to the awneris thairof, or to ony utheris havand thair ſpecial powar to that effect, thay findand ſufficient cautioun to keip all the ſaidis intromettouris, and all utheris our ſoverane Lord's lieges, harmles and skaithles for the ſaidis gudis, or for ony intromiſſioun thairwith, at all handis havand or pretendand to have interes thairto. *5 Decemb.* 1525, Alexander Kinghorne *contra the burgh of* Aberdene, 1 *t. c.* 283.

C. XLVI. ANENT ſhippis that brekkis in this realme. *Ja.* I. *fol.* 21. *act.* 138. 6 *Mart.* 1429.

Anent arriving, diſcharging and louſing of ſhippis.

C. XLVII. ANENT the ſtanching of derth, and the diſpoſitioun of wine, ſalt, or timber, efter the arriving. *Ja.* V. *fol.* 137. *act.* 80. 14 *Mart.* 1540. *Mar. R. fol.* 167. *act.* 35. 20 *Junij*, 1555.

C. XLVIII. THAT inbringaris of victual ſould be favorablie treatit. *Ja.* II. *fol.* 34. *act.* 42. 16 *Julij*, 1454. *Ja.* III. *fol.* 69. *act.* 105. 2 *April.* 1481. *&* *fol.* 63. *act.* 91. 6 *Aug.* 1477.

C. XLIX. SHIPPIS ſould cum to fré burrowis in the weſt ſeyis, and thair mak merchandice. *Mar. R. fol.* 168. *act.* 37. 20 *Junij*, 1555.

THAT

THAT ſtrangeris merchandis that cum with ſhippis, cum to the principal town. *Ja.* IV. *fol.* 96. *act.* 73. 26 *Junij*, 1493. C. L.

ITEM, Quhair divers ſhippis and veſſellis reſortis and lyis within ane haven, the laidnit ſhip or veſſell ſould have the ſchoar and place neireſt thairto, to be diſchargit and louſit; and all uther veſſellis or ſhippis, lyand neirer to the ſchoar, may be diſplacit and removit thairfra, ſwa that thay be not landand nor louſand, bot emptie, toom and waiſt. C. LI. The emptie ſhip ſould give place to the laidnit.

Anent hurt or harm done be ane ſhip to ane uther.

GIF ane ſchip lyand at the anchor in the road, or in the haven, brekis furth of hir towis or feſtningis, and is ſtrikin or hurt be ane uther ſhip, and thairby ſpillis hir gudis or wines, the skaith ſould be pryſit or partit betwix the twa ſhippis, and the skaith of the gudis that were in the twa ſhippis ſould be partit amangis the merchandis of baith; and the maſteris of the twa ſhippis ſould ſweir, with thair men and fellowis, that thay ſtrak not the ſhippis wilfullie, and for this reſſoun the skaith and gudis ſould be partit in twa halfis: For utherwayis ane auld ſhip may or will lay hir glaidlie in the gait of ane uther ſhip, to be ſtrikkin and hurt be hir, in hope to get the better ſhip to the amendis, or for interchange. *Ship lawis, c.* 25. *&* 38. C. LII. Of ane ſhip brekand furth of hir feſtning.

GIF divers and ſindrie ſhippis are in ane haven, or ony uther place, and the anchor of ane ſhip lyis over neir to ane uther, the maſter may deſire the men of the uther ſhip to raiſe and tranſport thair anchor: And gif thay will not remove it, the maſter and his marineris, that mon or micht tak the damnage, may tak it up, and lay it farder fra thame: Bot gif the uther will not ſuffer thame, and it do ony skaith or damnage, the uther ſould repair and mend the ſamin: And gif ony ſhipman lay his anchor without the tow, and it do skaith, he that laid it thair is addebtit to amend all the skaith done thairby: And gif thay ly dry in the haven, thay ſould lay markis at thair anchor, that thay may be planelie ſene. *Ship lawis, c.* 13. *&* 40. C. LIII. Of ane ſhip lyand neir ane uther ſhip.

GIF ony ſhip, be force of wind, or ſtorm of wether, is driven upon the anchor towis of ane uther ſhip, and the maſter, or ſhipmen, cuttis the ſaidis towis, thay may not be callit nor perſewit thairfoir, gif thay could not utherwayis ſaif thameſelfis. *Leg. Foreſt. c.* 12. *De judic. c.* 79. C. LIV. Of the cutting of ane ſhip's towis lyand at ane anchor.

ITEM, Quhair ony great preſſe of ſhippis lyis in ane harberie, and it happinis that thair is ſindrie lyand within uther fra the ſchoar, and ilk ane fallis out over on utheris, and dois uther damnage, and thair is ane mair damnagit nor all the reſt, or has ſufferit mair skaith than utheris, the skaith of ony ſhip or ſhippis quhilkis ſall happin to fall in this manner, ſall be equallie partit amangis the ſhippis that ly upon ather ſydis without the damnagit ſhippis fra the ſchoar, unto the nombre of thré ſhippis lyand without thame, quhilkis ſall C. LV. Of divers ſhippis lyand in ane harberie neir to uther.

be haldin to contribute with the utheris, and everie ane to recompence uther thair skaith. *Wisbie, c.* 10.

Anent the flude mark.

C. LVI. It is leasum to ony persoun to win stanes within the flude mark.

NA man havand landis pertenand to him, lyand adjacent to the sea, may mak stop, troubill or molest the King, or his lieges, to win stanes, quarrel, or ony uther thing, to his awin proffit or commoditie, within the flude mark of the sea, foiranent the saidis landis, except he quha stoppis the uther be speciallie infeft within the said flude mark, als weill as without the samin. 29 *Julij*, 1500, *The King* contra *the Laird of* Seafield.

C. LVII. It is leasum to louse, laidin, or cast anchor within the flude mark.

IT is leasum to ony mariner, master of ship, or uther persoun, to louse or laidin his ship or boat, and lay or place the samin, or festin his anchor within the flude mark, in all partis of this realme, but impediment or obstacle to be maid to him thairanent be ony persoun; bot he may do nane of the premissis outwith the flude mark in ony man's landis, possessiounis, or heritage, except he do the samin with licence and gude will. 4 *Julij*, 1498, Alexander Meldrum *of* Segie, *contra Burgh of* Cowper, 1 *t. c.* 98.

C. LVIII. Bait and small fish may be gatherit within the flude mark.

IT is leasum to all our soverane Lord's lieges to use and exerce ony industrie within the flude mark of the sea; *quia usus littoris est communis omnium*: And thairfoir gif ony man has ony landis lyand adjacent and contigue to the sea, he may not stop nor mak impediment to ony persoun to gather wilkis, cockles, limpettis, muscles, and uther small fish, or bait for taking of fish, upon the sandis or craigis within the flude mark foiranent his landis. 24 *Maij*, 1549, *The town of* Craill *contra* Gresill Meldrum, 1 *t. c.* 680.

Anent lettre of mark.

C. LIX. Quhen ane lettre of mark sould be grantit.

ANE subject of this realme being takin and pillit in his ship, gudis or geir, be ane stranger of ane uther countrey, na opin war nor hostilitie being betwix the uther countrey and this realme, the persoun swa pillit aucht first to persew befoir the Justice of thay countreymen quha pillit him, and bring ane certificat of thair answer and proceidingis in the matter: And gif it be fund thairby, that justice was denyit to him, the King's grace, with advise of his counsal, may give ane lettre of mark upon the said uther countreymen's shippis, to tak thairof ay and quhill the man that was pillit be recompensit of sa mekle gudis and geir as he wantit, the necessare expensis being deducit thairin. 3 *August*,——George Wallace *contra* Portugallis, 1 *t. c.* 644.

C. LX. LETTRE of marque aganis the *Portugallis* dischargit. *Mar. R. fol.* 179. *act.* 23. 4 *Junij*, 1563.

GIF

Anent actiounis and pleyis of ſhipmen.

C. LXI. The actiounis and querrellis betwix ſhipmen and ſtrangeris.

GIF ſhippis, twa or ma, of ſindrie kinrikis, arrive within this realme, and ony quarrel or contentioun ariſe betwix the men of the ſaidis ſhippis, the King's Admiral, or his deputis, ſould do juſtice, and cognoſce in all quarrellis movit amangis thame be ony of thame aganis utheris within this realme: And gif the perſewar, or defendar has payit the toll, and has done within this realme all that he aucht to do, and his ſhip be in the raid, it is leaſum to him to paſs peciabillie away quhair he will, and get law of uther quhair thay may beſt. *Leg. burg. c.* 27.

C. LXII. Of him that ſettis ane ſhip in hyre to ane uther.

GIF ony man hyris, or obtenis ſet of ane ſhip, veſſel, houſe, landis, or ony uther thing, he may ſet the ſamin agane to ony uther perſoun as pleiſis him, ather in all or in part, except ſpecial proviſioun be maid in the contrare; and the awner thairof has ever actioun aganis the firſt hyrer, to mak him payment of the hyre promiſit be him: And gif he be not poindabill thairfoir, the awner has gude actioun upon the ſecund hyrer's gudis, being within the ſaid ſhip, veſſel, landis, or houſe, bot has na actioun to the perſoun of the ſecund hyrer, nor to his uther gudis or geir, *Wisb. c.* 15.

C. LXIII. A mariner, or man of war's geir may not be takin in wad.

IT is expreſlie ordanit and forbiddin, that na tavernar nor hoſtillar tak in wad, or utherwayis buy, graith or wappinis pertening to ſuldeouris or marineris, for meit, drink, or expenſis of the mouth, or for lent monie, except the ſamin be done with licence of the Capitane, or of the maſter of the ſhip, under the pane of tinſel of that quhilk has bene lent or gevin be the tavernaris or hoſtillaris, and reſtitutioun of the ſaid wappinis and graith. *Conſt. c.* 6. *anno* 1557.

C. LXIV. Of injurie done to the ſhipmen, or to the maſter.

THE maſter hyris his men to hald thame in peace, and he is thair Judge, gif ony of thame dois injurie or hurt to ane uther: And gif ony of thame gevis the lie, or dois injurie be word to ane uther, he ſall pay iij. *d.* And gif the maſter layis on his men, and gevis ony of thame ane buffet with his neif, or with his palme, he ſall pay vij. *d.* Bot gif he ſtrikes him mair, he that is ſtrucken may turn and ſtrike agane; for gif the maſter ſtrikes ony of the marineris, the mariner ſould ſuffer and bide the firſt ſtraik, gif it be neif or hand; and gif he ſtrikes ony mair, he may defend him: Bot gif ony ſhipman ſtrike his maſter firſt, he ſould tyne ane hundreth ſhillingis, or his neif, at his maſter's will. *Ship lawis, c.* 5. *Kintor. c.* 12.

C. LXV. Anent ſouldiouris and marineris that ſtoppis voyage, or raiſis diſcord within the ſhip.

AND for ſa mekle as oftentimes ſum ſoldiouris, marineris, or officiaris of ſhippis, deſirand to brek the voyage or interpryſe of ane Capitane, or maſter, that is mindit to mak ane proffitabill voyage in warre or merchandice, has practiquit or practiquis to let the ſhip's drink, wine, or beir, rin out, and ſpill the breid, and mak quyet laikis in the ſhip ſecreitlie, for to have occaſioun to cum bak agane; alſwa movis and raiſis up querrellis, ſtrife and diſcord aganis the ſaid Capitane or Skippar, gevand him evil ſavourie or unhoneſt wordis, with

with injurious and inopportune wordis and language, condiſcending ſumtimes to evil, and to do outrage, drawand thair wapinis, compelland him to ſubmit him to thair ſimple will, quhilk is a thing of maiſt evil exempill, and pernicious conſequence, and ſould na wayis be ſufferit nor borne with: And for this cauſe we have, be thir preſentis, ſaid, declarit, and ordanit, and ſayis, declaris, and ordanis, that fra this furth, gif ony of the ſaidis ſouldeouris, marineris, or officiaris, happinis to be fund and apprehendit within the ſhip, or uther veſſel, makand ſic inſolence, ſtrife, and utheris faultis and crimes, of the foirſaid or the like qualitie, the ſaidis Capitanis, and maſteris of the ſamin ſhippis, ſall have powar, and, in ſa far as neid beis, permittis, ſufferis, and authorizes thame, that thay, with force of armis, may mak thameſelfis maſteris over thame; and be adviſe and conſideratioun of ſevin of the principal officiaris of the ſhip or veſſel quhair ſic fechting happinis; or utherwayis, gif thair beis companies of ſhippis, be adviſe of ſevin Capitanis or heidiſmen of the ſaidis ſhippis, to proceid ſummarlie *et de plano*, the onlie veritie of the deid beand knawin, for to do juſtice, punitioun and correctioun of the ſaidis treſpaſſouris, to the ſentence of deid, and executioun of the ſamin, *incluſivè*, diſchargeand the ſaidis Capitanis and maſteris thairanent, ſwa that thay have judgit and execute thame be the ordour, maner and form as ſaid is. *Wiſbie, c.* 8.

C. LXVI. Ane mariner may be witneſs in his maſter's cauſe.

ITEM, Gif ony deid is committit, or ony pactioun, conditioun or contract is maid upon the ſea in ane ſhip, or uther veſſel, betwix the maſter of the ſchip on the ane part, and ony of his marineris, or ony uther perſoun, on the uther part, at the committing or making of the quhilk thair happinis na perſoun to be preſent or neir by, bot the equipage of the ſaid ſhip; and it happin thairefter that ony contraverſie or queſtioun ariſe in judgment tuiching the ſaid deid or contract; in this cais the marineris, albeit thay be of the nature of ſervandis, and has meit and fie of the maſter of the ſhip, nevertheles thay may beir witnes with the maſter, or aganis him, gif thair be na uther reſſonabill cauſe to repell thame thairfra. *Kintor. fol.* 29. *c.* 3.

Anent Ferriaris:

C. LXVII. FERRIARIS ſould mak briggis, under pane of tinſel of thair baittis. *Ja.* I. *fol.* 10. *act.* 66. 11 *Mart.* 1425. *Ja.* III. *fol.* 49. *act.* 24. 12 *Octob.* 1467.

C. LXVIII. HOW mekle fraucht ſould be payit to Ferriaris, and of thame that takis doubill fraucht. *Ja.* III. *fol.* 59. *act.* 75. 9 *Maij*, 1474. *&* *fol.* 63. *act.* 92. 6 *Aug.* 1477. *&* *fol.* 72. *act.* 112. 24 *Feb.* 1483. *Ja.* IV. *fol.* 87. *act.* 31. 15 *Feb.* 1489. *Mar. R. fol.* 154. *act.* 23. 1 *Feb.* 1551. *&* *fol.* 167. *act.* 31. 20 *Junij*, 1555.

Anent the Conſervatour.

C. LXIX. THAT the cauſis of merchandis deid outwith the realme be decydit within. *Ja.* I. *fol.* 15. *act.* 99. 1 *Julij*, 1427.

THE

THE Conſervatour, with four merchandis, is judge betwix merchand and merchand, *Scottiſmen*, bezond the ſea. *Ja.* IV. *fol.* 106. *act.* 116. 11 *Mart.* 1503. C. LXX.

HE, or ane Procuratour in his name, ſould cum hame zeirlie. *Ja.* IV. *Ibid. act.* 117. C. LXXI.

HE ſould advertiſe the King of falſe cunzie. *Mar. R. fol.* 173. *act.* 4. 4 *Junij*, 1563. C. LXXII.

HE ſould receive the aith of *Scottiſmen* dwelland in the low countries, and cauſe thame pay for thair entrie 10 pundis *Flemiſh* to the King. *Ja.* VI. *fol.* 19. *act.* 32, 33. 20 *Octob.* 1579. C. LXXIII.

HE ſould receive the aith of merchandis, skipparis and factoris, cumand to and fra the low countries to this realme. *Ja.* VI. *parl.* 15. *c.* 257. C. LXXIV.

HE ſould eſchete the gudis of unfrémen ſailand to the low countries. *Ja.* VI. *fol.* 20. *act.* 33. 20 *Octob.* 1579. C. LXXV.

HE ſould ſend hame zeirlie to the Theſaurar the namis of all merchandis ſailand contrare the actis of parliament. *Ja.* V. *fol.* 122. *act.* 27. 7 *Junij*, 1535. C. LXXVI.

HE ſould not admit unlauchful coquettis. *Ja.* VI. *parl.* 15. *c.* 255. C. LXXVII.

HE ſould tak ane unlaw of all merchandis not landand at the ordinare ſtaple. *Ja.* VI. *parl.* 15. *c.* 258. C. LXXVIII

HE ſould puniſh uſureris. *Ja.* VI. *Ibid. c.* 259. C. LXXIX.

HE ſould ſend hame ane coquet of merchand gudis imbarkit in the low countries. *Ja.* VI. *Ibid. c.* 260. C. LXXX.

HE ſould confiſcat all gudis not contenit in the coquet. *Ja.* VI. *Ibid. c.* 255. And of all perſounis refuſand to mak aith with him. *Ja.* VI. *Ibid. c.* 257. C. LXXXI.

HE ſould mak compt of his intromiſſioun zeirlie to the Theſaurar. *Ja.* VI. *Ibid. c.* 255. C. LXXXII.

Anent the Admiral, his office and juriſdictioun.

C. LXXXIII. The Admiral, as Lieutenant general to the King, has juriſdictioun of all crimes concerning weirfare, merchandice and fiſching.

IT is ſtatute and ordanit, that the Admiral ſall be and remane general Lieutenant to the King's grace, of all armies or companies of men of weir that ſall be collectit and reikit to the ſea, and, be reſſoun of his office of admiraltie, ſall have cognitioun, juriſdictioun, and deciſioun of all actiounis, querrellis, or contraverſies of all crimes, faultis and treſpaſſis committit, als weill in time of weir, and be the occaſioun of the ſamin, as alſwa for the effairis of mer-

merchandice and fiſhing, and for utheris thingis quhatſumever happinand in the ſea, or in the portis of the ſamin, and in the iſles thairto adjacent, or in the coaſtis thairof, ſwa far as the ſea flude ebbis or flowis; and alſwa of all contractis maid and expede for the effairis of weir, and of fiſching and merchandice, tuiching the carying, louſing, and away taking of merchandice be ſea, or uther thingis in the effairis of navigatioun: And that na uther Judge or Judges within this realme ſall exerce or uſe the ſaid juriſdictioun, bot the Admiral or his deputis allanerlie. *Act.* 1. *art.* 52.

C. LXXXIV. Of the Admiral's juriſdictioun, and place of his court.

THE admiral, and his deputis, are Judges competent to all contraverſies and debaitis betwix *Scottiſmen* and *Scottiſmen*, and betwix ſtrangeris and *Scottiſmen*, anent all ſhippis, gudis, geir, and merchandice takin upon the ſea, and may hald courtis thairupon; quhilkis ſould be fenſit and haldin within the flude mark of the ſea, except diſpenſatioun be had in the contrare. *Demetrius de Coiſt* contra *Robert Bartane*, 1 *t. c.* 301.

C. LXXXV. The Admiral may mak and create Officiaris.

THE Admiral has powar and richt to nominat, mak and conſtitute Judges, Lieutenantis, and Advocatis, Procuratouris, Scribes, and all utheris, to the office and juriſdictioun of the ſeas, and ſeacoiſtis, quhen ony of thame ſall happin to vaik be deith, reſignatioun, or utherwayis: Alſwa the ſaid Admiral may conſtitute Procuratouris for him in the ſaidis juriſdictiounis, for conſerving of his richtis of the tent part of the prizes upon the ſea, as is efter ſpecifyit, and to conſtitute and put under him Vice-admirallis, having, in his abſence, ſiclike juriſdictioun and powar as himſelf, in all thingis concerning the ſaid eſtait and office of admiraltie, *Art.* 3. And the ſaid Admiral ſall cauſe the ſaidis Officiaris and Lieutenantis, and ilk ane of thame, to ſweir in his preſence, to do thair leill and debtful devoir, in thair offices and eſtatis, and obſerve, and cauſe be obſervit, the lawis, ordinances and conſtitutiounis concerning thair office and juriſdictioun. *Art.* 3.

C. LXXXVI. Nane may put ſhippis to the ſea, for to mak weir upon enemies, but licence of the Admiral.

ITEM, That nane may put furth ſhippis upon thair awin expenſis, of quhat eſtait, conditioun or degré thay be of, for to mak weir upon enemies, but licence of the Admiral, or his Vice-admiral or Lieutenant, quha ſall fé that the ſaidis ſhippis be ſufficientlie and convenientlie provydit of men of weir, armour, artilzearie, and of all that quhilk is neceſſare for weirfare: And gif ony thing ſall want, he ſall put, or gar put in the ſamin upon reſſonabill prices, to the effect that na inconvenient happin, and that the ſhip be not ſchamefullie takin for default of gude heid and ordour, or not being fillit with ſufficient men and munitioun for to offend and defend: And quhen the ſaid Admiral ſall find the ſaid ſhip to be ſufficientlie equippaged for to offend and defend, he ſall gar the heid ſweir and anſwer, togidder with the quarter-maſteris, be the form and maner as is abone ſaid, and ſall injoin to maſteris and patronis to obey to thair heidis, and the quarter-maſteris to the ſaid maſteris and patronis, upon the pane of corporal punitioun: And gif, throw diſobedience of ony, thair happinis ony inconvenient or tinſel, the Admiral, or his Vice-admiral or Lieutenant, ſall puniſh the faulter, efter

ter the exigence of the cause, and sall cause restoir the tinsel, unto the value and worth, gif it rises to sa mekle. *Art.* 15.

C. LXXXVII. The Admiral, in time of weir, may put shippis to watch and keip fischaris in time of fisching.

IT is leasum to the Admiral, in time of weir, or ony uther time suspectit of weir or troubill, to put furth shippis, to serve as guairdis and watches to our soverane Lord's lieges in time of fisching of herring, or ony uther fisches; the quhilk ship sall be put furth, sustenit and paid upon the expensis of the saidis fischaris, or utheris desyrand the saidis shippis, *Art.* 50. And siclike, the Admiral, in time of weir, may arm and reik out shippis, and utheris vessellis, to convoy our soverane Lord's subjectis, and utheris his freindis and confederatis, to saiftie, quhen thay sall be requirit thairto, and that upon thair expensis, as he and thay can aggré thairanent. *Art.* 51.

C. LXXXVIII. The Admiral sall tak the richtis and dewties of licences and saif-conductis.

ITEM, The Admiral may give licences, pasportis, and saif-conductis be the sea, and be the coastis and schoaris of the samin, and to have and tak the richtis and dewties of the licences and saif-conductis of all persounis takin be sea: And gif ony of quhatsumever powar pretendis, under the shadow of ony Capitane, quhatever he be, to cum in contrare to the saif-conductis; the said Admiral sall gar do justice, and mak siclike reparatioun as the cause sall require: For quhy, nane uther than he aucht nor sould intromet him with the effairis of the sea, bot gif he wer ane persoun havand of our soverane Lord particular and expres powar to do the samin. *Art.* 48.

C. LXXXIX. The Admiral has care and charge of all shippis of weir.

ITEM, Gif, for to mak weir upon our enemies, ony armie, or interpryse of shippis or vessellis beis maid or reikit to the sea, the Admiral, as said is, sall be cheif, or his Vice-admiral in his absence; and to him onlie sall appertene the haill charge and superintendence, togidder with the gaddering and outlaying of expensis in munitioun, equippaging, artilzearie, men and victuallis of the saidis shippis and vessellis. *Art.* 14.

C. XC. All shippis passand be sea sall be haldin to beir the baneris, standartis, and enseinzies of the Admiral.

ITEM, All shippis passand be sea under our soverane Lord's obedience, to quhomsoever persounis thay appertene, sall be haldin to beir the baneris, standartis, and enseinzies of the said Admiral; quha may put in the saidis shippis baneris, standartis, enseinzies, trumpettis and minstrellis, at his pleasour. *Art.* 15.

C. XCI. The powar of the Admiral upon the saidis shippis.

ITEM, He may alswa put pulderis, paveis, and speiris, for sic quantitie as he sall be requirit, to wit, ane pund of pulder for the tun, ane pavie and a fyre speir for thré tunnis, or mair gif neid beis, the haill efter competent weicht and bulk. *Art.* 16.

C. XCII. The Admiral may put ane man in everie of the saidis shippis.

ITEM, The Admiral, gif it beis sene gude, may put in everie ane of the saidis shippis ane habill man, be his advise, for to keip and visie the charter parties, and úther documentis, fund in the handis of the persounis that sall be takin be the saidis shippis, and of all thingis to mak report to him. *Art.* 19.

C. XCIII. The aith that heidismen and

ITEM, Quhen ony navie, or armie, sall be maid on the sea, be men

Capitanis of weir ſhippis ſall mak to the Admiral, and his Vice-admiral.

men that beis in our ſoverane Lord's wages, the ſaid Admiral, or his Vice-admiral or Lieutenantis, ſall gar the heidiſmen, Capitanis, and marineris of ilk ſhip, befoir thair departing, ſweir, that he ſall weill and richteouſlie govern, but doing damnage to our ſoverane Lord's ſubjectis, freindis, allyais, favouraris or weill-willaris; and alſwa to anſwer for the ſaid voyage, and for the men of thair charges and care; and attour, to anſwer for thair men, that gif thay, or ony of thame, happinis to commit ony crime or treſpas, he ſall not abſent himſelf, nor be fugitive; bot quhen he cumis to land, he ſall be preſentit to the Admiral, or his Lieutenantis, to anſwer as of richt and reſſoun ſall appertene; becauſe, gif the ſaidis heidiſmen or Capitanis do thair diligence, thair can be na fault committit within ſhip of the quhilk thay ſall not be advertiſit incontinent: And mairover, the ſaidis treſpaſſouris may not be abſentit or put aſide without thair knawlege, quhilk is utherwayis than it is of faultis committit upon land. *Art.* 17. & 31.

Item, Gif the ſaid Admiral, or ony of his Lieutenantis, be not preſent in perſoun in time of interpryſes that ſall be maid be ſea, for to hald ordour and juſtice among thame of the ſaid interpryſe, the maſteris, heid Capitanis, or patronis, afoir thair departing, ſall ſweir, like as is afoir ſaid, that at thair powar thay ſall defend our ſoverane Lord's ſubjectis, freindis, allyais, and weill-willaris, but ony damnage, harm or skaith; and of all prizes that thay ſall tak and bring on ſchoar, thay ſall give knawlege to the Admiral or his Lieutenantis, and to declair to him thair marineris, or men, quha, during the voyage, have committit ony fault aganis our ſoverane Lord's ordinance, or utherwayis, to be puniſt thairfoir as effeiris of the law. *Art.* 33.

C. XCIV. The Admiral may puniſh thame that has committit fault in thair voyage, pilzeit, ſtollen, ſunken ſhippis, or componit malicioufflie with enemies.

ITEM, Gif ony be fund to have committit fault in thair voyage, be it to have ſunken ony ſhippis, or ſtollen ony gudis thairof, or drownit the bodies of merchandis, maſteris, pilottis, or utheris perſounis of the ſaid ſhippis, or ſet the ſamin upon land upon ſum far coaſt, to the effect that thair thift and evil deid micht be conceilit, and haldin quiet; or quha, as may weill happin, as it has bene ſumtimes, that part thairof findand thame of mair powar, takis and ranſomis with monie, or ony uther gudis and geir, the ſhippis of our ſoverane Lord's ſubjectis, or ony utheris our ſoverane's freindis, or his allyais; it is ſtatute and ordanit, that, but ony delay, favour, or forbeiring, the Admiral do, or cauſe be done, juſtice and puniſhment, that it may be exempill to utheris to abſtene and abhor fra committing of the like crimes and treſpaſſis in all time cuming. *Art.* 22.

C. XCV. The Admiral ſould do diligence in ſtopping harm to be done be ſea to the King's ſubjectis or treindis, &c.

ITEM, Gif ony perſoun ſtoppis and makis impediment to ony merchand ſhip, or merchandice, pertening to our ſoverane Lord's ſubjectis, allyais, freindis, confederatis or weill-willaris, without ony juſt or reſſonabill cauſe; the Admiral ſall cauſe incontinent the damnage, harm and skaith to be reſtorit, and ſatisfactioun to be maid to thame quha ſuſtenit the ſamin; and ſall not ſuffer ony of our ſoverane Lord's freindis to be damnagit or skaithit in ony maner of way, be ony perſoun pretendand ony colour, or alledgeand that he

he knew not gif thay wer our ſoverane Lord's freindis or enemies. *Art.* 13.

C. XCVI. The Admiral may, twa times in the zeir, cauſe wappin-ſchawingis to be maid.

ITEM, For the watch that ſould be maid in time of troubill or weir upon the ſea coaſtis, the Admiral, gif he thinkis the ſamin neceſſare and expedient, may cauſe all men of the parochin, ſubject to the ſaid watch of the ſea, mak wappin-ſchawingis twiſe in the zeir, and compell thame to be bodin in geir, and furniſhit in wappinis to ſerve him with, for the defence of the ſea coaſtis, quhen the cauſe ſall require. *Art.* 7.

C. XCVII. The Admiral may cauſe mak watch, and compel the men ſubject thairto, to mak the ſamin.

ITEM, Quhen neid ſall be, the Admiral may gar mak watch on the ſea coaſt, be the men ſubject to the ſamin, and with ſic nombre of men as he ſall think maiſt expedient for the time, to wit, on the day be ſmook and reik, and on the nicht be ſignis of fire, as uſe is in ſic caiſis; and may compell to the ſaid watch the perſounis ſubject thairto, be taking of thair gudis, and warding of thair perſounis, untill the time that thay obey. Attour, the Admiral ſall viſie, and cauſe to be viſeit, ilk ſea coaſt, and provide that na inconvenientis happin to cum thairintill. *Art.* 8.

C. XCVIII. The inhabitantis of the ſea coaſtis within ane mile from the ſea, are haldin to mak the watch.

ITEM, To the effect that everie man may knaw in quhat place he ſall be haldin to mak watch, and that thairin thair be na diſordour nor confuſioun; we will and ordain, that the inhabitantis upon the ſea coaſtis, to ane mile diſtant fra the ſamin, ſall be haldin to mak watch upon the ſaidis coaſtis, and thairto ſall be compellit be the ſaid Admiral, Vice-admirallis, and utheris Officiaris of the ſaid admiralitie, in form foirſaid; excepting alwayis thay quha has uſit to watch in townis, caſtellis, and utheris ſtark places ſituate upon the ſea, like as thay have uſe, and not upon the ſea coaſtis. *Art.* 10.

C. XCIX. Of the richt pertening to the King and Admiral, of merchandice that ſall be win and ſaifit out of the ſea.

ITEM, Of all and haill quhilk ſall be drownit and win out of the ſea to land, als weill ſhip-graith, haill cordis, and flot-raipis of nettis, as barrellis and tunnis that fleittis, the thrid part ſall pertene to him, or thame, that ſall draw it out and ſaif it, and the thrid part to the Admiral, and ane uther thrid part to our ſoverane Lord, or to ony uther Lord or perſoun to quhom he has gevin richt of the ſamin thrid, unto thair landis: Bot gif the merchand perſew his merchandice within zeir and day fra the ſaid periſhing and tinſel, he ſall recover it, payand the uncoiſtis of the ſaifing to thame that has done the ſamin. *Art.* 11. And ſiclike, of all ſhippis, gudis, and merchandice, that ar periſht and win a-flot in the ſea; and generallie of all that quhilk beis paſt to the ground of the ſea, and be force or ingyneis drawin out or win, ane thrid part of all pertenis to him or thame that drawis and ſaifis the ſamin, ane uther thrid to the Admiral, and ane uther thrid to our ſoverane Lord the King. *Art.* 12.

CAP. C. Na ſhip nor veſſel, in time of weir, may enter in harberie but licence of the Admiral.

ITEM, Gif in time of weir ony ſhip, or uther veſſell, will enter in ony port or haven of our ſoverane Lord's realme, ſcho may not do it without authoritie or licence of the Admiral, or his Vice-admiral. *Art.* 13.

C. CI. The Lordis of counſal are not Judges competent to ony cauſe concerning the effairis of the ſea, bot aſſeſſouris in difficile materis.

GIF ony ſtranger takis ane ſhip with gudis and geir pertening to ane uther ſtranger; as gif ane *Frenchman* takis ane ſhip pertening to ane ſtranger, and bringis the ſamin to ony port or part within this realme; and the awner of this ſhip, or gudis, being haldin in priſoun and captivitie, complenis thairanent, deſyrand to be put at libertie, and his ſhip, with his gudis and geir, to be deliverit to him agane, alledgeand his ſhip and gudis to be na lauchful prize; the Lordis of counſal are not competent Judges to this mater, bot the ſamin ſould be decidit befoir the admiral and his deputis; becauſe the ſamin is ane actioun of weirfare. Nevertheles, gif the mater be difficile or weichtie, the Lordis may adjoin ane certane of thair nombre to be aſſeſſouris to the Admiral and his deputis. 9 *Novemb.* 1542, Antonie Delatour *contra* Criſtian Martin, 1 *t. c.* 555.

C. CII. The Admiral ſall reſſave the pulder, harnes, targes, pannais, and ankeris brocht in the ſhippis, at the returning fra thair voyage.

ITEM, The Admiral, or his Lieutenent, ſall uptake and reſſave the reſt of the pulder of the ſhippis pertening to our ſoverane Lord, that has bene put furth for the effairis of his Hienes weir; as alſwa, the ankeris and pannaſſis quhilkis ſall be brocht agane at the returning of the ſaidis ſhippis fra the ſea, to the fyne, to ſerve his Hienes in the uther effairis of his weiris, ſa as ſall be ordanit be the Admiral; and thairfoir to compell the heidis of the ſaidis ſhippis, maſteris, compter-maſteris, and quarter-maſteris, be taking of thair bodies and gudis, or utherwayis, as he is accuſtumat, for appropriating the ſaid remanent furnitour to his Hienes proper effairis. *Art.* 47.

C. CIII. Inhibitioun to all Notaris, to give ony certificatioun of merchandice that arrivis, and is loſt be the ſea.

ITEM, Becauſe that divers times it has happinit that ſum Notaris, Judges, and Officiaris, utheris than of the admiralitie, has ingyrit thameſelfis to give letteris of certificatioun of louſing of merchandice, and utheris thingis that cumis and arrivis be ſea, takand be thame upon hand the richt and authoritie of the ſaid admiralitie; we have ordanit, and ordanis, that ſic certificatiounis ſall have na place for thame quha ſa ſall have takin thame fra utheris, than fra our ſoverane Lord's Admiral, or his Lieutenentis, in time of weir; and forbiddis all Notaris, Judges, and Officiaris, utheris than our ſoverane Lord's Admiral and his Lieutenentis, to give ony ſic letteris tuiching and concerning the ſaidis effairis and actiounis of ſea, in quhatſumever maner it be, and that under the pane of ane amendis arbitrarie, *viz.* the half thairof to be applyit to our proper uſe, and the uther half to the Admiral. *Art.* 45.

C. CIV. Inhibitioun to all Judges, Schireffis, and foreſtaris, to arreiſt ſhippis beand in the havin, laidnit with timber or wod.

ITEM, Becauſe divers times ſum Judges, Schireffis, foreſtaris, ingyres, and preſſis thame to put ſhippis under arreiſtment, beand in the portis and havinis, under colour alledgeand that thay are laidnit with wod and uther merchandice pertenand, as thay alledge, to thair juriſdictioun, thairthrow takand upon hand the richtis, authoritie, court and juriſdictioun of the ſaid admiralitie; our ſoverane Lord inhibitis and forbiddis all Schireffis, foreſtaris, or utheris, of quhat eſtait ſoever thay be of, to tak upon hand to mell with the premiſſis in ony maner, bot to permit and leive the cognitioun thairof to the Admiral and his Officiaris, and that upon the pane of ane amerciament arbitrarie, to be applyit as is aforeſaid. *Art.* 46.

C. CV. The unlaw of the Admiral-

ITEM, All amerciamentis and unlawis, taxt and adjudgit to ony

ony of the Lieutenentis and Officiaris of admiralitie, in thair courtis and ordinare juriſdictioun, aucht and ſould pertene to the Admiral allanerlie. *Art.* 4. court pertenis to the Admiral.

GIF ony burges of ony burgh be auchtand ony debt or ſowme of monie to ony ſtranger dwelland in *Flanderis*, *Ingland*, or ony uther realme, the Admiral, nor his deputis, ar na wayis Judges competent thairintill, bot the ſamin ſould be decidit befoir the Proveſt and Baillies of the burgh quhair the debtour dwellis. 28 *Maij*, 1533, *The burgh of* Monros *contra* Andro Wod *Admiral-depute*, 1 *t. c.* 426. C. CVI. The Admiral is not Judge competent in actioun of debt auchtand be ane burges of this realme to ony ſtranger.

ITEM, Of all prizes that ſall be takin in the ſea be our ſoverane Lord's ſubjectis, or utheris freindis and confederatis, under colour and ſchadow of weir, or utherwayis; at the leiſt twa or thré priſoneris thairof, apparent to be of the greiteſt dignitie and eſtait, ſall be brocht on land, and preſentit to the Admiral or Lieutenent, to be examinat be him, befoir that ony thing of the ſaidis prizes be louſit, to the effect that he may perfectlie knaw the realme and countrey quhairof thay are, and to quhom the ſhippis that are takin, and gudis contenit thairin, dois appertene, and thairby mak cognitioun gif the ſamin be juſt prize or not. *Art.* 20. C. CVII. That of all prizes takin, thair be certane priſoneris preſentit to the Admiral.

ITEM, Becauſe oft-times it happinis, that quhen ane prize is takin fra our ſoverane Lord's enemies, the takeris thairof uſis to mak thair proffit of the ſamin, contrare to our ſoverane Lord's ordinances and conſtitutiounis thairanent, and being as zit on the ſea, brekis the cofferis, baillis, packis, bulgettis, maillis, tunnis and uther veſſellis, for to tak and pilzie that quhilk thay may of the ſaid prize, quhairby the awneris, and thay quha has reikit and put furth the ſhippis upon greit coiſtis and expenſis, are mekle oppreſt, quhairof cumis and happinis greit pleyis, debaittis and contentiounis; it is defendit and forbiddin to all cheifis and heidiſmen, compter-maſteris and patronis, quarter-maſteris and marineris, to mak opning of ony cofferis, baillis or packettis, maillis, bulgettis, tunnis, or utheris veſſellis, of ony prizes that thay tak, or ony thing of the ſaidis prizes, to conceill, tranſport, ſell, or change, or utherwayis mak alienatioun of the ſaidis prizes or geir, untill thay firſt preſent the ſamin, with the perſoun convoyand and guydand the ſhippis, to the Admiral, or his Vice-admiral, the ſooneſt that may be done, for to be diſponit as ſall appertene, conform to our ſoverane Lord's ordinances, under the pane of confiſcatioun of thair gudis and warding of thair perſounis. *Art.* 24. C. CVIII. Na perſounis ſould intromet with ony merchandice takin in ony prizes, befoir the ſamin prizes and priſoneris be preſentit to the Admiral.

Item, The Capitanis, Quarter-maſteris, or Skipperis, Compter-maſteris, and all uther Officiaris, ſall cauſe the marineris, and haill companie beand in the ſaidis ſhippis, mak faith, that thay ſall not ſteil, tak, reive, pilzie, nor conceil ony gudis or geir within the ſaidis prizes, quhatever thay be, untill that thay have firſt preſentit the ſamin to the Admiral, or to his Lieutenent, under the pane abone expremit. *Art.* 26.

ITEM, We have forbiddin, and forbiddis, upon the pane of warding of thair bodies, and confiſcatioun of all movabill gudis per- C. CIX. Na man ſall buy, barter,

nor change ony merchandice of the prizes takin, untill the samin be declarit gude and just prizes.

pertening to all merchandis, of quhatsumever estait, qualitie or conditioun thay be of, to buy, barter, change, cheise, or tak be gift, or uther colour or conditioun quhatsumever, or to conceil or hide, be thamselfis or utheris, directlie or indirectlie, the merchandice or gudis brocht from off the sea within shippis, befoir the Admiral, or his Lieutenent have declarit the prizes to be gude, and of just and leasum winning. *Art.* 31.

C. CX. Anent the taking of prizes.

ITEM, For sa mekle as divers and sindrie shippis and vessellis seikis and askis ane part of prizes win be ony uther ship or shippis, alledgeand that thay have helpit the said prizes to be takin, quha heard thair artilzearie induring the time of the combat, and thairthrow, and for feir of thame, gave occasioun to the enemies, beand within the saidis prizes, to render thameselfis; it is statute and ordanit, for eschewing of contraversies and differences quhilkis may arise and ensew upon sic unjust and unlauchful petitiounis, that it sall not be leasum to ony ship, pertening to quhatsumever persoun, to ask or desire ony part or portioun of ony prize that sall happin to be takin, bot gif it be that thay have fochtin, and done thair dewtie, and thairthrow have movit the men to strike thair sailis, or utherwayis have bene in ony part the cause thairof, quhairof the prisoneris sall be trowit, and have credence upon thair aithis, except it be that thair was promise maid amangis thame to bute and part the prizes takin ather in thair presence or absence. *Kintor. pag.* 31. *Art.* 6.

C. CXI. Of a stranger takin in a ship, and haldin in captivitie.

GIF ony man of our soverane Lord's lieges, or strangeris, takis ane ship, with ony gudis or geir pertening to ane stranger, and haldis him in prisoun and captivitie, alledgeand him to be ane lauchful prisoner, and his ship and gudis just prize; he that is takin desyrand to be releivit out of captivitie, to the effect that he may persew his actioun aganis his taker, he aucht and sould be put to libertie, without ony impediment or payment of ransom; because he is not as zit justifyit, quhidder he be just prisoner or not; provyding that he find sufficient cautioun to remane, and persew his actioun to the end, and to enter agane to his taker, in cais it be fund be the Judge that he is ane lauchful prisoner. 10 *Novemb.* 1542, Antonie Delatour *contra* Cristian Martin, 1 *t. c.* 556.

C. CXII. Of shippis pertening to a confederat Prince with this realme, takin be ane uther confederat Prince.

JUST weir beand betwix twa forayne Princes, quha baith are confederat and joinit in freindship and amitie with our soverane Lord and his lieges, gif ather of thame takis ony ship, with gudis or geir pertening to the uther, and bringis the samin within ony port or part of this realme, the samin ship, with all that is thairin, may be declarit be the Admiral, and his deputis, to be a just prize, to be intromettit with, and disponit be his Hienes, and his lieges, as just prize and merchandice, conform to the lawis of this realme usit in sic caisis. 13 *Julij*, 1525, *The King of* Denmark *contra the States of* Almanie, 1 *t. c.* 637.

C. CXIII. That na persoun buy ony gudis or geir

GIF ony persoun, of ony natioun beand confederat or in peace with this realme, tak ane ship or gudis of ane uther natioun, alfwa beand freindis with this realme, gif ony of the lieges of this realme

alme chances to buy ony of the ſaidis takin gudis, befoir the ſaid ſhip be decernit to be lauchful prize to the taker of the ſamin, and it being knawin or provin, the King may charge the buyaris thairof to enter thair perſounis in ward, thairin to remane upon thair awin expenſis, ay and quhill thay have fund ſovertie to keip his Hienes, his realme and lieges, skaithles at all handis havand interes to the ſaid geir. And attour, the ſaidis perſounis, buyaris of the ſaidis gudis, may be puniſt be our ſoverane Lord at his Hienes will and diſcretioun, for breking of the commoun peace of this realme. 17 *Junij*, 1487, *The King* contra Andro Moubray *and utheris*, 1 *t. c.* 34.

befoir the ſhip and the ſamin be decernit to be a juſt prize.

C. CXIV. Ane ſhip of ane confederat laidin with gudis pertening to enemies, is a juſt prize, with the ſaidis gudis.

WEIR ſtandand betwix us and *Ingland*, gif ony ſhip pertening to ony Prince, realme, or town, confederat with this realme, be takin and apprehendit be ony of our ſoverane Lord's lieges, laidnit with victual, gudis or geir pertening to ony *Ingliſhman*, and brocht within this realme, for ſtrenthening, ſuſtening and uphalding of ony caſtel, towre or fortalice, being for the preſent in *Ingliſhmen*'s handis, the ſamin ſhip, with the men and geir within hir, is juſt and lauchful prize be the lawis of this realme, 1 *t. c.* 670.

C. CXV. Shippis pertening to freindis or confederatis, takin with gudis pertening to enemies, are juſt prize, with the ſaidis gudis.

ITEM, It is ſtatute and ordanit, that gif ony of our ſoverane Lord's lieges takis ony prize upon the ſea, pertening to ony uther his Hienes ſubjectis, or his allyais, confederatis or freindis, havand in thame men, gudis or geir, pertening to his Majeſtie's enemies: And ſiclike, gif ony of his ſubjectis takis ony ſhippis pertening to his enemies, havand in thame merchandice, or ony uther gudis, pertening to his Hienes ſubjectis, allyais, confederatis or freindis, in all, or in part and portioun thairof; that all and ſindrie the ſaidis ſhippis, with all gudis and merchandice contenit thairin, ſall be declarit, ordanit, and decernit to be juſt and lauchful prizes confiſcat, like as gif the ſamin had pertenit to our ſoverane Lord's enemies; becauſe our ſoverane Lord's ſaid ſubjectis, allyais, confederatis, or freindis, may mak thair traffique be ſea within ſhippis that be of thair awin obedience and ſubjectioun, and be thair awin men and ſubjectis, but ony reſſaving of our ſoverane Lord's enemies and adverſaris, and may bring gudis and merchandice ſwa laidnit quhair beſt ſemis thame. *Art.* 42.

C. CXVI. The charter parties of all prizes takin in the ſea, ſould be preſentit to the Admiral.

ITEM, Becauſe it may happin, that ſum of our ſoverane Lord's allyais and confederatis beir greiter favour to his enemies and adverſaris, than to his Hienes and his ſubjectis, and for that cauſe, to ſay and ſuſtene, contrare the veritie, that the ſhippis takin on ſea be our ſoverane Lord's ſubjectis ſould pertene to thair ſoverane and thame, with the merchandice, for to defraud his ſaidis ſubjectis; thairfoir his Hienes willis and ordanis, that incontinent efter the taking and boarding of the ſhippis, his Hienes ſaid ſubjectis mak diligent recoverie of the charter parties, and utheris letteris concerning the laidning of the ſhippis; and incontinent, efter thair cuming on land, to preſent or have thame to his Hienes's Admiral, or his Lieutenent, to the effect he may knaw quhom to the ſaidis ſhippis and merchandice pertenis; and quhair thair beis na charter partie fund within the ſaidis ſhippis takin, or that the maſteris or ſhipmen had caſtin

thame into the ſea, for to conceil the veritie, we will that the ſaidis ſhippis ſwa takin, and the gudis and merchandice being thairin, be declarit and decernit ane gude and juſt prize. *Art.* 43.

C. CXVII. Of geir pertening to ane freind, and takin with ane enemie's ſhip.

GIF gude peace and trewis be ſtanding betwix this realme and *Ingland*, and weir being betwix *Ingland* and *France*, gif ony *Ingliſhmen* takis ane *French* ſhip, with *Scottiſmen*'s gudis in hir bottom, the ſamin gudis may be confiſcat and eſchete, als weill as the *Frenchman*'s ſhip or gudis. 15 *Decemb.* 1509, 1 *t. c.* 152.

C. CXVIII. Of ſhippis pertening to our ſoverane Lord's freindis, and takin within his watteris.

WEIR ſtanding betwix the King of *France* and the Emperour, and peace being betwix this realme and *France*, na *Frenchmen* may tak ony ſhip, gudis or geir, pertening to ony of the Emperour's lieges, within our ſoverane Lord's ſeas and watteris, and havand our ſoverane Lord's ſaif-conduct: And gif ony ſic ſhip happinis to be takin, ſcho aucht to be reſtorit and deliverit agane; for ſcho is na juſt nor lauchful prize. 9 *Jan.* 1524, 1 *t. c.* 44.

C. CXIX. Of ane ſhip takin be enemies, and recoverit be ane freind.

GIF it happinis ony ſhip or veſſel to be takin be the enemies, and thairefter, within the ſpace of xxiiij. houris, to be recourſit and takin agane be ony of our ſoverane Lord's lieges, the ſaid ſhip, with all the gudis and geir contenit in hir, aucht and ſould be reſtorit to the awneris: Bot gif the ſaid ſhip was in the enemies handis and poſſeſſioun, be the ſpace of xxiiij. houris, and thairefter is recoverit be ony ſubject or freind, the ſamin is juſt and lauchful prize, with all the gudis and geir contenit in hir, and ſall pertene to him quha recoverit hir out of the enemies handis. *Kintor. pag.* 31. *Art.* 9.

C. CXX. That all prizes and priſoneris be brocht to the haven fra the quhilk thair taker departit.

ITEM, For to eſchew all diſcord and confuſioun, and that na perſoun be prejudgit of his richt, we will, that the maſteris, compter-maſteris, guyderis and pilottis, and utheris havand care and charge of ſhippis, bring the perſounis, ſhippis, merchandice, veſſellis, and utheris gudis quhilk thay ſall tak in thair voyage, to the partis fra quhilk thay louſit, under the pane to tyne the haill richt that thay ſall have to the ſaid prize, and buteing of gudis, and ane amerciament and unlaw at the Judge's will; the haill to be applyit to the Admiral, at quhais command and juriſdictioun the ſaid port, out of the quhilk thay are departit, is preſentlie ſubject and reſponſal: And attour, under the pane of corporal puniſhment, unleſs be the force and powar of enemies, or be tempeſt, thay happin to be compellit to ſaif thame in ane uther port or part, *Art.* 28. And gif the maſteris, heidiſmen, or Capitanis of the ſhippis, or governouris and pilottis, may not bring the ſaidis prizes to the portis quhairfra thay departit, for the cauſis foirſaidis, the Admiral ſall have als mekle richt and dewtie thairof as gif thay had arrivit in the ſaid port. *Art.* 29.

C. CXXI. Anent the keiping of priſoneris.

ITEM, The Admiral, his Lieutenentis, and Officiaris of the admiralitie, may put thair priſoneris into ward, and keip thame in our ſoverane Lord's townis, burghis, places, or caſtellis, or in the houſis and places of his Hienes ſubjectis dwelland neir to the ſea coaſt; and the governouris and magiſtratis of the ſaidis townis ſall be

be haldin to give and lend thame priſſounis to the effect foirſaid, thay payand and makand the reſſonabill expenſis of the ſaidis priſoneris. *Art.* 5.

C. CXXII. Of ane being takin be the enemies, quha is compellit to ſerve aganis the lieges.

GIF ony of our ſoverane Lord's lieges be takin be ony pirat ſhip of ane uther countrey, and thairefter it happinis the ſamin pirat to tak and apprehend ony ſhip pertening to ony uther realme, as to *Ingland*, or *France*, the ſamin *Scottiſman* takin of befoir being in his companie, the awner of the ſaid *Ingliſh* or *French* ſhip has na actioun aganis the ſaid *Scottiſman*, for reif, ſpuilzie, or intromiſſioun with the ſhip, or geir being thairin, ſpeciallie he not intromettand thairwith, nor na part thairof cumand to his utilitie and profit; becauſe he was violentlie takin, and detenit perforce be the ſaid pirat, and ſwa haldin in captivitie was compellit be force to aſſiſt him in the taking of the ſaid ſhip. 22 *Martij*, 1566, Guilzeaum Pullat *Frenchman contra* Leonard Robertſone, 1 *t. c.* 899.

C. CXXIII. Of the parting of buteing, and of the awner of the ſhip's part.

ITEM, Becauſe divers awneris and victualleris of ſhippis of our ſoverane Lord's ſubjectis have heirtofoir ſchawin us, that albeit thay gar mak the ſaidis ſhippis, and the ſamin equippages and graith, and furniſhes artilzearie, and uther munitioun for weir, and victuallis, for to greive and offend his Hienes enemies and adverſaris, upon greit coiſtis and expenſis; nevertheles thair is not gevin bot ane xviij. part for thair part and portioun of buteing of gudis quhilkis are takin and win fra his Hienes enemies and adverſaris; quhilk is not ane ſufficient recompence, reſpect being had to the greit coiſtis, deburſit money, and expenſis that thay lay out, to gar mak the ſaid ſhippis, and to graith and furniſh the ſamin with munitioun and victuallis; quhilk is the cauſe that the ſaidis awneris thameſelfis, and victualleris, may not put furth and ſerve us of greit ſtrong ſhippis, ſa as thay micht do, gif of the ſaidis gudis and buteing a competent portioun wer diſtributit to thame: We thairfoir, to the end that thay may have the greiter occaſioun and will to gar mak and uphald gude, greit, ſtrong and puiſſant veſſellis and ſhippis, quhairwith we may be ſervit and helpit in our weiris aganis our enemies and adverſaris, and the ſamin fullilie to furniſh in graith and munitioun, and to garniſh thame with all thingis requirit for the weir; we have ordanit, and ordanis, that the ſaidis awneris, and utheris to quhom ſall pertene ony ſhippis, efter the tent part for the ſaid Admiral is takin and deducit off the totalitie and haill thing of the ſaid prizes and gudis that the ſaidis ſhippis ſall tak, thay ſall have the fourt part of the ſuperplus and reſt of the ſaidis gudis and prize, be it of merchandice, ranſomit priſoneris, or quhatſumever buteing or gudis within the ſaidis prizes, but ony thing to be reſervit and exceptit; and of the thré quarteris reſtand, the victualleris ſall have ane quarter and ane half, and the marineris, and utheris thair fellowis, men of weir, ane uther quarter and a half for thair part, amangis thame, in maner uſit and wont. *Art.* 25.

C. CXXIV. Of that part of buteing quhilk pertenis to the marineris and ſouldeouris.

ITEM, Nevertheles, for to give better occaſioun and will to the ſaidis marineris and men of weir, to uſe thameſelfis vertuouſlie in the effairis of weiris, we will and ordanis, that thay ſall have all the ſpuilzie and pillage of cleithing, harnes and wappinis of enemies,

mies, quhilkis ſall be takin be ſtrenth in the ſaidis prizes, with the gold and ſilver that thay ſall find upon the marineris and men of weir, our enemies, unto the ſowme of ten crownis of the ſone: And gif it beis mair, it ſall remane to bute and parting: Alſwa, thay ſall have cofferis and commoun claithis ſervand for the ſaidis marineris and men of weir our enemies, except claithing of greit price, or that beis maid to ſell in merchandice; reſervand alſwa all merchandice and ſilver cunzeit, quhilk beis in the ſaidis cofferis, or uther places; for then, and in that cais, thay ſall not have bot the ſaidis ten crownis afoirſaid, the haill upon the ſaidis panis of confiſcatioun of bodie and gudis. *Art.* 27.

C. CXXV. Nathing may be callit pillage quhilk exceidis the valour of ten crownis of the ſone.

ITEM, Becauſe divers men of weir of the ſaidis ſhippis wald ſay and alledge ſindrie gudis and buteingis to keip the nature of pillage, for to apply the ſaidis gudis and buteing to thair proffit, in hurt and prejudice of thame that furniſhit armis, and graithit the ſaidis ſhippis, we have declarit and ſaid, and declaris and ſayis, that nathing may be ſaid nor haldin for pillage quhilk exceidis the valour of ten crownis. *Art.* 30.

C. CXXVI. Anent the men of weir's dewtie upon ſea, and of it that pertenis to Officiaris, marineris and utheris.

ITEM, Anent the article maid of befoir anent pillage, it is to be underſtuid, that all thingis maid furth be the awneris, ſic as herring-nettis, barrellis, lines and huikis, or thingis of weir of greit quantitie, extending to the valour of ten crownis of the ſone, aucht not to be pillage, nor zit uther lines that had ſervit at the fiſhing, being of ſic valour as exceidis ten crownis, aucht not alſwa to be maid pillage. All harnes, barrellis full of ſalt fiſh, and utheris ſic veſſellis unheidit, quhairin the marineris or fiſharis brocht furth thair claithing for thair voyage, the ſamin beand takin aucht to be maid pillage, and pertene to the marineris; becauſe it pertenit to the fiſharis, and had cum to thair awin particular uſe and proffit, as thair portage, and not to the awneris; and quhatſumever thingis beis not maid pillage, bot beis equallie dividit betwix the ſhip and victualleris for ane half, and the companie for ane uther half, the Admiral ſould have his dewties thairof, albeit that pillage payis na admiralitie.

Item, Of all pillage, the Capitane, the Maſter, the Boatiſman, the Barbour, Cuke, and Gunner, gettis na part nor buteing, bot it ſall be equallie dividit amang the remanent of the companie marineris that mak watch, and gangis to the ruder; becauſe the Capitane gettis the Capitane's kiſt, his abulzeamentis, and uther harnes, wappinis and graith, cheinzie, and uther ſiclike thingis, pertening to the Capitane of that prize; and alſwa the Capitane ſall have the beſt piece artilzearie gottin in the prize. The maſter ſould have the maſter's quhiſſill and cheinzie, of quhatſumever quantitie it be of, with his kiſt and graith within the ſamin, be it money or uther thing, ſwa that it excede not ten crownis of the ſone; the maſter farther gettis of the ſhip takin be him and the companie, the beſt cabill and anchor for his abordage: And gif thair be ma ſhippis takin, he ſall have of everie uther ſhip that beis takin, ane pund *ſterling* for his dewtie, and na cabillis nor anchoris bot ane, as ſaid is, and that ane he may tak of the beſt of all the ſhippis.

Item,

Item, The Boitiſman aucht to have the top ſailis of everie ſhip that is takin, or then reſſonabill compoſitioun thairfoir.

Item, The Gunner ſall have the brokin pulder furth of the haill and unſtrikin-up veſſellis of everie ſhip that is tane, with the Gunner's graith, kiſt and bullettis.

Item, The Barbour aucht to have the Barbour's kiſt, and haill work-looms, with the druggis and uther graith pertening to him.

And the Cuke ſould have the fire veſſell uſit and worn in the prizes, and quhairin thay frequent to mak meit reddie, all and haill, but ony reſervatioun. *Fol.* 29. *c.* 2.

C. CXXVII. The Admiral ſall have and tak to his proffit the tent part of the prizes and gudis takin upon the ſea, fra the enemies.

ITEM, To the effect that the Admiral may the better ſupport the coiſtis and expenſis that ſall appertene to him to mak, in the executioun and uſing of his charge and office, and that he may the mair honorablie intertene him in our ſoverane Lord the King's ſervice, into the ſaid office, we have gevin and ordanit, and gevis and ordanis, the tent part of all the prizes and conqueſtis takin upon the ſea, and ſchoaris of the ſamin, aganis his Hienes enemies, to quhatſumever ſowme, valour or eſtimatioun that the ſaid tent part may riſe to; and that na uther has, or may have, ony richt to the ſaid tent part. *Art.* 58.

C. CXXVIII. The Admiral's dewtie of prizes that ſall be takin be the Lordis, merchandis, and burgeſſis, upon ſea, havand victuallit the ſhippis.

ITEM, As to victuallis, gunnis, pulder, targes, artilzearie or munitioun, win be ſhippis deliverit to ony uther, as Lordis, maſteris, merchandis, burgeſſis, and utheris of our ſoverane Lord's realme, upon thair expenſis, the quhilkis thingis have bene befoir pretendit be the Admirallis of this realme to pertene to thame; we have declarit and ordanit, that notwithſtanding that the Admiral ſall not bruke the ſamin all and haill, bot allanerlie ſall tak of the ſaidis thingis the richt of his tent part and dewtie; zit gif he wald tak ony part for the neceſſitie that he may have for the weir, or for to graith our ſhippis, or his awin, he may do it, payand thairfoir ſiclike as ane uther perſoun dois offer, his ſaid dewtie the tent part rebaitit; providing that befoir this be done, the ſaidis ſhippis ſall be roupit and compriſit to the maiſt valour of the laſt and derreſt offerer and buyar, into places uſit to roup, as has bene uſit for ſelling of movabill gudis done be authoritie of us and our Juſtice, to the end that reſſoun and equitie be keipt and obſervit to all theſe to quhom it ſall pertene, but favour or exceptioun of perſounis. *Art.* 59.

C. CXXIX. The richt that the Admiral ſall tak upon perſounis takin be merchandis ſhippis.

ITEM, In the ſamin maner, anent priſoneris takin upon the ſea be ane merchand ſhip, the Admiral ſall have allanerlie his richt of the tent part, with the richt of his ſaif-conduct, for the returning of the ſaid priſoner: Bot the ſaid Admiral may not ask ony uther thing, nor have the keiping of the ſaidis priſoneris, bot in ſa mekil as ſall ariſe to his part and portioun of the ſaid tent part: Bot gif it be ſwa that the priſoner be of greit valour, and his takeris of ſmall qualitie and conditioun, then it wer not gude to leave him in thair handis. Bot gif ony perſoun, but licence or conſent of the Admiral, Vice-admiral, or Lieutenent, puttis ony priſoner to ranſome, he ſall tine his privilege; and the Admiral, in this cais, may tak at his awin hand the priſoner payand the ſaid ranſome, rebaitand upon the ſamin his ſaid richt of the tent part. *Art.* 40.

Followis the lawis and ſtatutis aggreit upon and obſervit betwix this realme and Ingland, *during the time of the trewis, amitie and pèace, concerning ſea effairis and materis.*

In the firſt, it is thocht expedient, and concludit, that gif during the peace and amitie, it fortune be violence of tempeſt, or uther neceſſare cauſe, compelling our marineris, ſailing from ane part to ane uther, to ſuffer ſhipwrak, ſwa that ony humane perſoun of thame be living, the gudis and the ſhippis ſall not be underſtuid to be takin away fra the awneris, bot it ſall be reſervit to thame quha had bene befoir awneris and proprietaris thairof.

Item, It is concludit and aggreit, that during the peace, truce, and freindſhip, gif it fortune ony of the lieges or ſubjectis of ather of the realmis of the Princes afoirſaidis, ſailing be ſea, quhidder thay be merchandis or pilgrimis, fiſcheris, or utheris, of quhatſumever conditioun, to arrive in ony part or place quhatſumever of the kingdom of ather Prince, be violence of tempeſt, or ony uther urgent and reſſonabill cauſe compelling thame to do the ſamin, quhen thay effectit nor covetit it not, nather purpoſit the ſamin at the time of thair departing out of thair countrey; or to ſuffer ſhipwrak, ſwa that ony humane perſoun in the ſhp ſwa ſuffering ſhipwrak be on lyfe; it ſall not be leaſum to ather Prince, or to ony thair ſubjectis, be thameſelfis, or be utheris, theſe ſwa arrivit and ſufferit, to tak out of thair ſhippis, gudis, merchandice, or ony uther thing ſwa brocht, or to detene be ony meanis thame ſwa arrivit or ſufferit ſhipwrak, or to arreiſt, or cauſe be arreiſtit, be reſſoun of ony perſoun's debt, the ſamin thingis, gudis, or merchandice: Bot it ſall be lauchful for the ſamin perſounis, ſwa arrivit and ſufferit ſhipwrak, to depart with thair ſhippis, gudis, merchandice, and uther thingis, als ſchortlie as thay may, efter that thay have amendit thair ſhippis, without impediment, or ony let, arreiſt, or uther occaſioun to be done to thame be ather of the ſaidis Princes, or thair ſubjectis.

Item, It is concludit and aggreit, that gif ony of the ſubjectis or lieges of ather of the Princes, ſwa arrivit as is afoirſaid, cum to the kingdom of the uther King, under ſaif-conduct, and befoir the dait of the expiratioun of this thair ſaif-conduct, to be ſa vehementlie vexit with ſeiknes, that the ſamin perſounis, ſwa arrivit or ſuffering ſhipwrak, or cuming with his ſaif-conduct, with his or thair ſhippis or ſhip, with the quhilk thay arrivit befoir the day of the expiratioun of thair ſaif-conduct, cannot, without loſs, depart or return to thair awin countries; then it ſall be lauchful to him, or thame, ſwa arrivand or ſufferand ſhipwrak, or being ſeik quhenſoever, ſaiflie and ſurelie to tarie in that place in the quhilk it chances him or thame, ſwa arrivit or ſufferit ſhipwrak, to fall ſeik, untill he or thay be amendit; and fra thence furth, it ſall be lauchful for thame, with letteris teſtimoniallis to be grantit and direct to thame, for ane reſſonabill ſowme of money, be the Mayor, Baillies, Conſtabill, or ony uther Officiar of the King's, quhair it may fortune thame to be ſeik, to depart to thair awin countries: And the ſamin ſeik men aucht to depart, without troubill or vexatioun to be maid unto thame be ony of the ſubjectis or lieges of ather realmis,

ſwa

ſwa that thay, nor nane of thame in the meane time, procure nor do nathing prejudicial to ather of the Princes, thair ſubjectis and Kingdomis.

Farthermair, it is concludit and aggreit, that gif, during the amitie, it chance ony ſtrangeris, not being ſuſpect to ather of the Princes, to tak the ſhip or ſhippis, perſoun or perſounis, thingis, merchandice, or gudis quhatſumever, from the ſubject of ather of the ſaidis Princes, that theſe had brocht into ony port or place ſubject unto ather of the Princes; it ſall be na wayis lauchful to that Prince, or ony of his ſubjectis, to buy thame, or ony part of thame, or to reſſave be ony meanis, to his proffit, without the conſent of him or thame, or thair factouris, to quhom the gudis, or ſic thing, befoir thay wer takin, richteouſlie did appertene: And gif the merchand, or awner of the gudis, or his factouris be not by, then it ſall be lauchful and ſufficient to have leive of the maſter, heidis, and governouris of the ſaid ſhip, befoir the taking, and of the uther perſounis being in the ſamin ſhip: And gif ony thing be done or attemptit in the contrare of this ordinance, then the perſounis, gudis, merchandice, and thingis quhatſumever, bocht ſo or reſſavit, ſall be haillelie reſtorit be ſic buyaris and reſſaveris, to him or thame to quhom ſic gudis did appertene, trewlie, without fraud or guyle; even ſwa thay muſt be reſtorit als gude as gif thay had bene takin be the ſubjectis of that Prince in quhais kingdom ſic thingis had bene brocht; and nevertheles, the partie that had acceptit the ſamin ſall alſwa be punithit, as the violator and brekar of this preſent treatiſe, according to the maner and qualitie of the crime.

Alſwa, it is concludit and aggreit, that gif it chance ony ſhip of ather of the parties afoirſaid ſufferand ſhipwrak to be brokin, and ſum of the perſounis being in the ſaid ſhip remaneing on life, without fraud, malice or ingyne quhatſumever, the merchandice, gudis, and thingis quhatſumever, quhilk beis caſt furth, or drawin furth of the ſaid ſhip, or gatherit on the ſea, or cum to land, or utherwayis ſaifit and preſervit be theſe to quhais landis ſic gudis, merchandice, and thingis have cum, ſall not be waiſtit, diminiſht, alienate, dividit, or be ony meanis withdrawin or cancellit, bot haillelie, without ony diminution quhatſumever, ſall be deliverit to the governour of that lordſchip or place into the quhilk the ſaidis gudis did fortune to cum, or to his deputis, to the uſe and proffit of him or thame to quhom theſe gudis, the treuth being knawin, did appertene, to be ſaiflie keipt to thame be the ſpace of ane zeir, from the newis of the ſhipwrak, or brek of the ſhip to be comptit.

And for the recoverie thairof within the ſaid ſpace fra him, it ſall be lauchful to follow befoir the competent Judge in that behalf, for the recoverie and reſtitutioun of thingis, merchandice, and ſic gudis; to quhilk perſoun, ſwa followand, reallie, and with effect, thay aucht to be deliverit and reſtorit, payand reſſonabill expenſis and charges maid upon the perſoun or perſounis ſwa beand left on life, cuming fra the ſaid ſhip to land, furthwith, frelie, according to the effect and tenour of theſe preſentis.

Item, It is concludit, gif ony ſhip of the ane partie, or of the uther afoirſaid, arrive at ony port, haven, or uther place of the foirſaidis parties, being laidnit with men, thingis, merchandice, or gudis, brokin, or to buy victuallis, neceſſitie compelling thame thairto

to, for amendment quhairof it behovit thame to unlaid the ſaid ſhip, and to ſet on land the men, gudis, or merchandice contenit in the ſamin; in that cais the men, or gudis, ſwa laid on land, without impediment, or payment of cuſtumis, ſall be laid in the ſamin ſhip agane, ſwa mendit, or ſall be frauchtit in ony uther, and be ſufferit frelie to depart; provyding that ſic ſowmis of money be trewlie contentit and payit for the cuſtume of the wares, thingis, gudis, or merchandice thair ſauld for the buying of neceſſarie victuellis for the nombre of the perſounis.

Item, Becauſe that the ſubjectis on the ane part ſailing be the ſea are impeſchit oftentimes from thair courſe, and ſufferis uther loſs, for that the ſubjectis on the ane partie wald ſtop the utheris courſe, quhilk thay had notice of be cocquet, and uther ſufficient and evident meanis, that thay be the ſubjectis of the uther partie, and ſwa ar compellit to let down, or quhollie ſtrike thair ſailis; amang the ſaidis Commiſſionaris it is concludit, that it ſall not be lauchful to ony of the ſaidis ſubjectis, of the ane part or of the uther, to lett ony ſubjectis of the uther partie in ſailing, ſwa it may appeir evident be ſic coquettis that the ſhippis and gudis be the ſubjectis of the uther partie; or to compell thame to ſtrike ſail, or to lett thame in thair lauchful courſe: And gif ony dois in the contrare, thay muſt be greivouſlie and ſeverelie puniſht thairfoir.

The ordour of the chancellarie.

C. I. Quhairin the ordour of the chancellarie conſiſtis.

THE ordour of the King's chapel or chancellarie, conſiſts, firſt and cheiflie, in the directioun of brevis, and reſſaving and comptrolling of retouris, the charge quhairof belongis to the directour of the chancellarie; as alſo, the keiping of the teſtimonial of the greit ſeill, commounlie callit the quarter ſeill; to quhais office pertenis likewayis the writing to the greit ſeill.

C. II. The namis and nombre of brevis.

OF auld thair wer ſindrie formis of brevis, quhilk are now out of uſe, as may appeir in the buke callit *Regiam Majeſtatem*, *Quon. attachiamenta*, *c.* 31. and ancient actis of parliament; bot preſentlie thair remanis onlie bot ſevin brevis in commoun uſe; that is, 1. The general breif, or the breve of ſucceſſioun. 2. The breve of tutorie. 3. The breve of idiotrie. 4. The breve of tierce. 5. The breve of limitatioun of landis within burgh. 6. The breve of diviſioun. 7. The breve of perambulatioun of marches: Of the quhilkis, thré onlie ar anſwerit and retourit agane to the chancellarie, *viz.* the brevis of ſucceſſioun, of tutorie, and of idiotrie, bot of the remanent four na anſwer returnis.

C. III. The form of the breve of ſucceſſioun, and of the divers directioun thairof.

JACOBUS, Dei gratia, Rex Scotorum, vicecomiti, et ballivis noſtris de A. ſalutem: Mandamus vobis, et præcipimus, quatenus per probos et fideles homines patriæ, per quos rei veritas melius ſciri poterit, magno ſacramento interveniente, diligentem ac fidelem inquiſitionem fieri faciatis, de quibus terris, et annuis reditibus, cum pertinentiis quondam B. C. pater D. C. latoris præſentium, obiit ultimo veſtitus et ſaſitus, ut de feodo, ad fidem et pacem noſtram, infra

fra balliam veſtram; et ſi dictus D. C. ſit legitimus et propinquior heres ejuſdem quondam B. C. patris ſui, de dictis terris et annuis reditibus cum pertinentiis; et ſi ſit legitimæ ætatis; et quantum valent dictæ terræ et annui reditus cum pertinentiis nunc per annum; et quantum valuerunt tempore pacis; de quo tenentur; per quod ſervitium tenentur; in cujus manibus nunc exiſtunt; qualiter, per quem, quam ob cauſam, et a quo tempore. Et quod per dictam inquiſitionem diligenter et fideliter factum eſſe inveneritis, ſub ſigillo veſtro vicecomitis, et ſigillis eorum qui dictæ inquiſitioni intererunt faciendæ, ad capellam noſtram mittatis, et hoc breve. Teſte meipſo. Apud, &c. die menſis—anno regni noſtri, &c.

THIS breve of ſucceſſioun in the ſecund clauſe or point, *viz. Et ſi dictus D. C. ſit legitimus et propinquior heres dicti quondam B. C. de dictis terris et annuis reditibus, cum pertinentiis*, is divers wayis direct: Firſt, gif the ſucceſſioun cum be line, it is direct *ut antea*. 2. Gif it cum be proviſioun of infeftment, gevin be a man to his wife in conjunct-fie, and the airis to be gottin betwix thame, it is ſaid in the breve, *Si ſit legitimus, et propinquior heres ejuſdem quondam B. C. inter ipſum et E. ſuam ſponſam procreat. de dictis terris et annuis reditibus cum pertinentiis.* Thridlie, gif the ſucceſſioun cum be tailzie, the breve is direct in commoun termis, with thir wordis in the end of the foirſaid ſecund Article, *Ratione talliæ.*

C. IV. The ordour of the anſwer, or retour, gevin to the breve of ſucceſſioun, and preceptis paſt according thairto.

To this breve of ſucceſſioun thair ar twa maneris of retouris, or anſweris, reportit to the chancellarie; the ane general, the uther ſpecial. The general retour beirand the defunct deceſſit at the faith and peace of the King; that *D. C.* is his narreſt and lauchful air, and that he is of lauchful age. This ſervice is callit general ſervice, or to be ſervit air in general, quhilk gevis the perſoun that is ſervit the place and actioun to perſew and defend quhatſumever actioun competent to him be the deceis of umquhile *B. C.* his father or predeceſſour, in ſum uther degré. The ſpecial retour being ane direct anſwer to everie point of the ſaid breve; the tryal quhairof is alſwa, to ſé gif the breve be dewlie and lauchfullie proclamit upon fiftene dayis warning, and ſervit be ane ſufficient nombre of inqueſt, of xiij. perſounis at the leiſt, is referrit to the Director and his Clerkis of the chancellarie. And gif all be fund in gude ordour, conform to the directioun and punctis of the breve, the landis being retourit to hald of the King be ſervice of ward, ane precept is direct, under the teſtimonial of the greit ſeill, incloſit in quhyte walx, to the Judge ordinar, befoir quhom the ſervice was deducit, commanding him to give ſaſine to the perſoun retourit, or his Actornayis, of the landis contenit in the retour, and to tak ſecuritie for the maillis and dewties thairof, ſwa lang as thay have bene in the King or his predeceſſour's handis, be reſſoun of ward and non-entres: Bot gif thair be bot onlie ward, and the air is enterit, befoir ane term rin in non-entres, efter the outpaſſing of the ward; in that cais the King fallis na releif, bot onlie the maillis during the time of the ward, quhilkis ar taxt and ſummed in the end of the precept: And gif the landis be haldin blanche, or in few ferme, the like ſecuritie is takin for the maillis thairof, during the time of the non-entres, with the doubilling of the blanche ferm,

or few ferm, according to the halding of the landis. Quhairupon thair is a memoire, or a note, commounlie callit a *Reſponde*, in a buke beiring the dait of ilk precept; quhilk buke is zeirlie gevin in be the ſaid Direƈtour, or his deputis, Clerkis thairto, to the chekkar, that thairby the Schireffis and Judges, gevaris of the ſaid ſaſine, may be comptrollit. Further, in the end of ilk ane of the ſaidis preceptis it is ſaid, *Præſentibus poſt proximum terminum minime valituris*; quhairthrow, gif the obtenar of the precept furth of the chancellarie ly out, and tak not ſaſine upon the ſamin, quhill ane term, or ma, be run efter the dait thairof, he is alwayis to cum agane to the chancellarie, and raiſe ane new precept, quhairin is augmentit the byrun maillis of the landis ſen the dait of the firſt precept, and a new memoire of *reſponde* is maid thairupon: And in cais it be tenementis within burgh, haldin of the King in frè burgage, thair is na ſecuritie tane thairof, nor zit ony *reſponde* maid thairin: And quhair thair is nather ward nor non-entres, to wit, quhen the air obtenis entrie immediatlie efter the deceis of him that died laſt ſaiſit, befoir the rinning of ane term, thair is ſecuritie onlie to be takin of the ward land, and of the doubill of the blanche and few ferm of the few land for the entrie: And gif the landis be haldin of ane mediat ſuperiour, ane precept ſall be direƈt to him, and his Baillies, requirand thame to give ſaſine to the perſoun retourit air of thay landis, or his Aƈtornayis, in this forme:

JACOBUS, Dei gratia, Rex Scotorum, dilecto noſtro A. B. ſuperiori terrarum infra ſcript. et ballivis ſuis, ſalutem: Quia per inquiſitionem, de mandato noſtro, per vicecomitem, &c. compertum eſt, quod quondam B. C. pater D. C. latoris præſentium, obiit ultimo veſtitus et ſaſitus, ut de feodo, ad pacem et fidem noſtram, de terris de F. jacent. in baronia de G. infra vicecomitatum prædiƈt. et quod diƈtus D. C. eſt legitimus et propinquior heres ejuſdem quondam B. C. patris ſui, de diƈtis terris cum pertinentiis; et quod eſt legitimæ ætatis; et quod diƈtæ terræ de diƈto A. B. tenentur in capite: Vobis præcipimus et mandamus, quatenus cum idem D. C. tibi fecerit, pro diƈtis terris, quod de jure facere tenetur, ſibi, vel ſuo certo aƈtornato, latori præſentium, ſaſinam earundem terrarum juſte haberi faciatis, ſine dilatione, ſalvo jure cujuſlibet. Et hoc nullo modo omittatis. Teſte meipſo. Apud, &c. die menſis ——— et regni noſtri anno, &c.

Quhilk gif the ſaid ſuperiour diſobey, being requirit perſonallie to that effeƈt, and ane inſtrument of his refuſe reportit to the chancellarie, ane uther precept is direƈtit, callit *Meminimus*, in this form:

JACOBUS, Dei gratia, Rex Scotorum, dilecto noſtro A. B. ſuperiori terrarum infra ſcript. et ballivis ſuis, ſalutem. Meminimus nos vobis alias dediſſe in mandatis, quod juſte, et ſine dilatione, deliberari faceretis dilecto noſtro D. C. vel ſuo certo aƈtornato, ſaſinam terrarum de F. cum pertinentiis, jacen. infra vicecomitatum noſtrum de G. ſalvo jure cujuſlibet: Quod mandatum noſtrum hucuſque facere minime curaſtis, prout intellexímus; ſuper quo miramur. Quare vobis iterato mandamus, et firmiter præcipimus, quatenus eidem D. C.

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vel ſuo certo actornato, latori præſentium, juſte haberi faciatis, et ſine dilatione, ſalvo jure cujuſlibet. Et hoc nullo modo omittatis. Teſte meipſo. Apud, &c. —— die menſis —— et regni noſtri anno, &c.

QUHAIRWITH the ſaid ſuperiour in like maner is chargit perſonallie, or at his dwelling-place: And gif he then alſwa diſobey, ane inſtrument thairof being reportit, he is chargit be the thrid precept in this form:

JACOBUS, Dei gratia, Rex Scotorum, dilecto noſtro A. B. ſuperiori terrarum infra ſcript. et ballivis ſuis, ſalutem. Quia per inquiſitionem de mandato noſtro, per vicecomitem noſtrum de G. factam, et ad capellam noſtram retornatam, compertum eſt, quod quondam B. C. pater D. C. latoris præſentium, obiit ultimo veſtitus et ſaſitus, ut de feodo, ad pacem et fidem noſtram, de terris de F. jacen. in baronia de G. infra vicecomitatum prædictum; et quod dictus D. C. eſt legitimus et propinquior heres ejuſdem quondam B. C. patris ſui, de dictis terris cum pertinentiis; et quod eſt legitimæ ætatis; et quod dictæ terræ de dicto A. B. tenentur in capite. Vobis præcipimus et mandamus, quatenus cum idem D. C. tibi fecerit pro dictis terris, quod de jure facere tenetur, ſibi, vel ſuo certo actornato, latori præſentium, ſaſinam earundem juſte haberi faciatis, et ſine dilatione, ſalvo jure cujuſlibet. Et hoc nullo modo omittatis. Quod niſi feceritis, præcipimus per alias literas noſtras dicto vicecomiti noſtro de G. quod hoc eidem D. C. vel ſuo certo actornato, juſte haberi faciat, et ſine dilatione. Salvo jure cujuſlibet. Teſte meipſo. Apud, &c. Die menſis —— anno regni noſtri, &c.

ALL quhilkis thré charges beand diſobeyit, gif the ſaid ſuperiour haldis the ſaidis landis retourit immediatlie of the King, ane precept is direct to the Schiref, or uther Judge, befoir quhom the breve was ſervit, requirand him to give ſaſine of the landis to the perſoun retourit as ſaid is.

JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de G. ſalutem. Sciatis, quod præcipimus per alias noſtras literas A. B. et ballivis ſuis, quod juſte, et ſine dilatione, haberi faceret, D. C. vel ſuo certo actornato, ſaſinam terrarum de F. jacen. infra balliam veſtram, ſalvo jure cujuſlibet, quod niſi fecerit vobis præcipimus et mandamus, quatenus eidem D. C. vel ſuo certo actornato, latori præſentium, ſaſinam dict. terrarum cum pertinentiis juſte haberi faciatis, et ſine dilatione, ſalvo jure cujuſlibet. Et hoc nullo modo omittatis. Teſte meipſo. Apud, &c. die menſis —— anno regni, &c.

BOT gif the landis be haldin be the mediat ſuperiour of ane uther mediat ſuperiour, the perſoun retourit having uſit the ordour of the ſaidis thré preceptis and charges upon his mediat ſuperiour, meanis him thairefter to the Lordis of counſal and ſeſſioun, ſchewand ane inſtrument upon the laſt refuſe, and, be thair deliverance, obtenis letteris chargeand the nixt mediat ſuperiour to give the retourit perſoun ſaſine of the landis, under the pane of horning: For quhen the ordour of the chancellarie failzies, and is diſobeyit, the

Lordis

Lordis of counſal uſuallie provydis this ordour, quhilk is obſervit aganis mediat ſuperiouris of retourit landis, as alſwa is obſervit upon preſentatiounis to tenandries of landis fallin in the King's handis be foirfaltour, eſchete, baſtardie, laſt air, or ſiclike.

Breve of tutorie.

C. V. The form of the breve of tutorie, with retouris and letteris paſt according thairto.

JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de A. ſalutem : Vobis mandamus et præcipimus, quatenus per probos et fideles homines patriæ, per quos rei veritas melius ſciri poterit, magno ſacramento interveniente, diligentem et fidelem inquiſitionem fieri faciatis, quis ſit propinquior agnatus, i. e. conſanguineus, ex parte patris, D. C. filio et heredi quondam B. C. Et ſi ille propinquior exceſſit ætatem xxv. annorum; et ſi ſit ſuæ rei providus, et potens cavere idonee de adminiſtratione rei alienæ ; et ſi ille propinquior ſit immediate ſucceſſurus ipſi D. C. ſi ipſum contigerit in fata decedere ; et ſi ſit aliquis tunc ex parte matris ipſius D. C. qui eſſet idonior, apud quem uſque ad ipſius legitimam ætatem poſſet et deberet ipſe D. C. educari. Et quid per dictam inquiſitionem diligenter et fideliter factum eſſe inveneritis, ſub ſigillo veſtro vicecomitis, et ſigillis eorum qui dictæ inquiſitioni intererunt faciendæ, ad capellam noſtram mittatis, et hoc breve. Teſte meipſo. Apud, &c. die menſis —— anno regni, &c.

Breve of idiotrie.

C. VI. *JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de A. ſalutem : Mandamus vobis, et præcipimus, quatenus per probos et fideles homines patriæ, per quos rei veritas melius ſciri poterit, magno ſacramento interveniente, diligentem et fidelem inquiſitionem fieri faciatis, ſi D. C. ſit incompos mentis, fatuus, et naturaliter idiota, ſic quod timetur de alienatione tam terrarum ſuarum, quam aliarum rerum, mobilium et immobilium ; et quamdiu ſuſtinuit illam fatuitatem: Et ſi ſit quis nunc, qui eſt propinquior conſanguineus patris dicto D. C. et ſi ille propinquior ſit ſuæ rei providus, et poſſet cavere idonee de adminiſtratione rei alienæ ; et ſi ſit legitimæ ætatis. Et quod per dictam inquiſitionem diligenter et fideliter factum eſſe inveneritis, ſub ſigillo veſtro vicecomitis, et ſigillis eorum qui dictæ inquiſitioni intererunt faciendæ, ad capellam noſtram mittatis, et hoc breve. Teſte meipſo. Apud, &c. die menſis —— anno regni noſtri, &c.*

THIR brevis of tutorie and idiotrie are retourit to the chancellarie effeirand in everie point ; quhilk beand fund and tryit in ordour, ane letter of tutorie is gevin out, under the teſtimonial of the greit ſeill, making him that is retourit narreſt of kin of the father ſide, tutor lauchful to the pupil and idiot: The form of the quhilk letter followis, *viz.*

C. VII. Form of a letter of tutorie *JACOBUS, Dei gratia, Rex Scotorum, omnibus probis hominibus ſuis, ad quos præſentes literæ pervenerint, ſalutem: Sciatis, quia*

per

per inquiſitionem, de mandato noſtro, per vicecomitem noſtrum de R. *factam, et ad capellam noſtram retornatam, compertum eſt quod* B. *eſt patruus, et propinquior agnatus, id eſt, conſanguineus ex parte patris,* C. *filii et heredis quondam* E. D. *qui deceſſit ad pacem et fidem noſtram, in menſe, &c. anno, &c. Et quod ipſe* B. *jam exceſſit ætatem viginti quinque annorum; et quod eſt ſuæ rei providus, et potens cavere idonee de adminiſtratione rei alienæ; et quod ipſe* B. *eſt immediate ſucceſſurus* C. *ipſi, ſi eum* C. *contigerit in fata decedere: Igitur fecimus, conſtituimus, et ordinavimus, ac tenore præſentium facimus, conſtituimus, et ordinamus, dictum* B. C. *tutorem legitimum prædicti* C. *pupilli, ac adminiſtratorem omnium et ſingularum terrarum ſuarum, hereditatum, poſſeſſionum, bonorumque omnium, mobilium et immobilium, quorumcunque, uſque ad ipſius* C. *legitimam ætatem. Proviſo tamen quod dictus* B. *tutor legitimus antedictus, faciat et perimpleat dicto* C. D. *pupillo omnia et ſingula, quæ tutor legitimus de jure, ſeu regni noſtri conſuetudine, facere et perimplere tenetur; et quum ad ætatem pervenerit legitimam, ſibi et propinquioribus ſuis amicis, de dictis ſuis terris, firmis, reditibus et bonis, fidele computum et rationem reddat. Quare univerſis et ſingulis quorum intereſt, vel intereſſe poterit, ſtricte præcipimus et mandamus, quatenus dicto* B. *tanquam tutori legitimo dicti* C. *pupilli, per nos ſpecialiter conſtituto, ſuiſque factoribus in omnibus et ſingulis dictum officium tutoris legitime concernentibus prompte pareant, reſpondeant et intendant, ſub pœna omni quæ competere poterit in hac parte. Datum ſub teſtimonio noſtri magni ſigilli. Apud, &c. die menſis —— anno regni, &c.*

lauchful under the quater ſeill.

Breve of tierce.

C. VIII. The form of the breve of tierce, quhairof na retour is reportit to the chancellarie.

JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de A. ſalutem. Mandamus vobis et præcipimus, quatenus dilectæ noſtræ B. *ſponſæ quondam* D. E. *latori præſentium, haberi faciatis rationabilem tertiam partem ſuam, ipſi juſte et ſecundum aſſiſam terræ contingentis, de omnibus et ſingulis terris et annuis reditibus, cum pertinentiis, quæ et qui fuerunt dicti quondam* D. E. *mariti ſui hereditarie, infra balliam veſtram, quas et quos de nobis tenuit in capite, et de quibus obiit veſtitus et ſaſitus, ut de feodo; tantum inde facien. quod, pro veſtro defectu, amplius inde juſtam querimoniam non audiamus. Teſte meipſo. Apud &c. die menſis —— anno regni, &c.*

Breve of lineatioun.

C. IX. The form of the breve of lineatioun of landis within burgh, quhairof na retour is reportit.

JACOBUS, Dei gratia, Rex Scotorum, præpoſito et ballivis burgi noſtri de A. ſalutem. Mandamus vobis et præcipimus, quatenus per duodecim de melioribus, et fide dignioribus, burgen. dicti burgi, magno ſacramento interveniente, juſte et ſecundum leges burgi lineari facia-tis terram B. C. *jacen. in dicto burgo, ex parte boreali vici regii ejuſdem, inter terram de* E. *ex parte orientali ex parte una, et terram de* T. *ex parte occidentali ex parte altera, ſecundum rectas et veteres diviſas burgorum; et ſicut dicta terra per dictos lineatores limitata fuerit, ita eam de cetero firmiter obſervari faciatis; tantum inde facien. quod,*

quod, pro veſtro defectu, juſtam querimoniam non audiamus. Teſte meipſo. Apud, &c. die menſis ——— anno regni, &c.

Breve of diviſioun.

C. X. The form of the breve of diviſioun, or partitioun of landis quhairof na retour is reportit.

JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de A. ſalutem. Mandamus vobis, et præcipimus, quatenus terras de F. cum pertinentiis, jacen. infra balliam veſtram, inter A. B. ex parte una, et C. D. ex parte altera portionarios dictarum terrarum, juſte, et ſecundum aſſiſam terræ partiri faciatis; tantum inde facien. quod pro veſtro defectu amplius inde juſtam querimoniam non audiamus. Teſte meipſo. Apud, &c. die menſis ——— anno regni, &c.

Breve of perambulatioun.

C. XI. The form of the breve of perambulatioun, quhairof na retour is reportit.

JACOBUS, Dei gratia, Rex Scotorum, A. juſticiario noſtro ex parte auſtrali aquæ de Forth, generaliter conſtituto, vel ejus lotum tenentibus, ſeu tenenti, ſalutem. Mandamus vobis et præcipimus, quatenus per probos et fideles ac antiquiores homines patriæ, juſte, et ſecundum aſſiſam terræ perambulari faciatis rectas metas et diviſas, inter terras de F. cum pertinentiis, quæ ſunt A. B. ex parte una, et terras de G. cum pertinentibus, quæ ſunt E. F. ex parte altera, jacen. in baronia de T. et infra vicecomitatum noſtrum de K. Et ſicut dictæ diviſæ et metæ juſte, et ſecundum aſſiſam terræ, perambulatæ fuerint, ita eas de cetero faciatis firmiter obſervari; tantum, inde facien. quod pro veſtro defectu amplius inde juſtam querimoniam non audiamus. Teſte meipſo. Apud, &c. die menſis ——— Anno regni, &c.

C. XII. Of commiſſiounis, and utheris letteris, direct furth of the chancellarie, under the teſtimonial of the greit ſeill, upon landis.

THAIR is commounlie twa ſortis of commiſſiounis; ane that paſſis be deliverance of the Lordis of counſal and ſeſſioun, for ſerving of brevis, or deciding of actiounis, quhair thair is cauſe of ſuſpitioun in the ordinare Judge, or deidlie feid ſtanding betwix parties, or utheris reſſonabill conſideratiounis moving the Lordis thairto; quhilkis commiſſiounis beiris, word be word, the cauſis and narratioun of the ſupplicatioun and deliverance. The uther ſort of commiſſiounis paſſis upon ſignatouris, ſubſcryvit be the Prince, and ſic are commounlie grantit for juſticiarie, and puniſhment of tranſgreſſouris; upon the quhilkis, eſpeciallie quhair powar is gevin to uptak eſchetis of the perſounis that are convict and execute, or to inbring the ſamin, or ony part thairof, to the King's uſe, thair is ane memoire maid in the buke of *reſponde*, quhilk is zeirlie gevin to the chekkar, beirand the name of him to quhom the commiſſioun is grantit, the effect, and the dait.

C. XIII. Actis of parliament, and decreitis under the greit ſeill.

THAIR is alſwa ane certain form of confirmatiounis that paſſis upon actis of parliament, or decretis of the Lordis of counſal and ſeſſioun; namelie, quhen a partie has ane act of parliament, or decrete, that concernis him as ane evident, quhilk neceſſarlie wald be lang and weill kept, the ſamin act or decrete being authentiquelie ſubſcryvit be the Clerk of regiſter, he writis abone the heid thairof,

of, *C. ad cancellariam*; and swa it is presentit at the chancellare, quhairupon ane confirmatioun is gevin out in thir termis, *Sciatis nos quoddam actum parliamenti nostri, sive decretum per dominos nostri consilii et sessionis, inferius descript. datum et provulgatum, utique intellexisse, sub hac forma*: Efter the quhilk the act or decrete is insert word be word, *Quod quidem actum parliamenti, sive decretum suprascript. omniaque et singula in eodem contenta, in omnibus et per omnia, forma pariter et effectu, ut præmissum est, approbamus, ratificamus, ac pro nobis et successoribus nostris pro perpetuo confirmamus. Datum sub testimonio nostri magni sigilli*, the day that the decrete is gevin; and for warrand thairof the decrete is kept in the chancellarie.

C. XIV. Preceptis upon letteris of regres and decretis.

PRECEPTIS of sasine of landis redemit, quhilkis wer annalzeit to be haldin of the King, quhairupon letteris of regres are direct furth of the chancellarie, at command of the Lordis of counsal and sessioun, past upon the supplicatioun of the partie redemer; quhairwith is presentit the regres and instrument, or letter, grantand the saidis landis lauchfullie redemit. Thir preceptis contain at lenth the narratioun of the supplicatioun, and ordanis the Schiref, or Judge ordinar, to quhom it is direct, to give sasine, conform to the desire in the conclusioun and answer of the Lordis gevin thairupon: And the like preceptis are direct in the causis quhair the Lordis, be thair decretis, ordanis thame to be past be the chancellarie, quhair thair is default in the Judge ordinar, or superiour; quhairunto the decrete is warrand.

C. XV. Captioun under the greit seill.

THAIR passis a letter of captioun under the testimonial of the greit seill, for apprehending of persounis denuncit rebellis, direct to the ordinar Judges, containing the narratioun of the supplicatioun gevin in to the Lordis of counsal to that effect; quhairunto the samin supplicatioun and ordinance of the Lordis on the bak thairof is sufficient warrand.

C. XVI. Letteris of presentatioun, of tutorie dative, *&c.*

PRESENTATIOUNIS to tenandries of landis fallin in the King's handis be foirsaltour, eschete, bastardrie, last air, or siclike, the signatouris beand subscrivit be the King, and Thesaurare, and his Clerk, and past the Thesaurare's registe, passis directlie at the chancellarie, under the testimonie of the greit seill.

LETTERIS of tutorie dative upon the signatour subscryvit be the King passis the samin seill.

OF all thir letteris na registe is maid, bot the warrandis are kept. Alswa, the summoundis of tressoun, and summoundis of errour, being libellit, and formit be the King's Advocat, are direct under the testimonial of the greit seill, upon the Advocat's subscriptioun, or deliverance of the Lordis of counsal and sessioun.

Protectioun.

C. XVII. The formis of the letteris of protectioun,

JACOBUS, Dei gratia, Rex Scotorum, omnibus probis hominibus suis, ad quos præsentes literæ pervenerint, salutem. Sciatis nos di-

actornay, compulſorial, and ſic uther, uſuallie direct furth of the chancellarie without warrantis.

dilectum noſtrum A. B. terras ſuas, homines ſuos, et univerſas eorum poſſeſſiones, et omnia bona ſua, mobilia et immobilia, ſub firma pace, et protectione noſtra juſte ſuſcepiſſe. Quare firmiter inhibemus, ne quis iis malum, moleſtiam, injuriam, ſeu gravamen aliquod inferre præſumat injuſte, ſuper noſtram plenariam forisfacturam; præſentibus poſt annum minime valituris. In cujus rei teſtimonium, has literas noſtras ſibi fieri fecimus patentes. Apud Edinburgh, &c. die menſis, &c. anno regni, &c.

Actornay.

C. XVIII. *JACOBUS, Dei gratia, Rex Scotorum, omnibus probis hominibus, ad quos præſentes literæ pervenerint, ſalutem. Sciatis quod ſuſcepimus A. B. C. vel eorum aliquos, vel aliquem, actornatos, vel actornatum, dilecti noſtri conſanguinei D. E. in omnibus negotiis, et loquelis, placitis et querelis, motis ſeu movendis, ipſum noſtrum conſanguineum tangen. ſeu tangere valen. quibuſcunque diebus et locis, contra quoſcunque, et coram quibuſcunque: Quare vobis præcipimus et mandamus, quatenus dictos A. B. C. vel eorum aliquos, vel aliquem, quos et quem præſentes, vel preſentem, eſſe contigerit, tanquam actornatos, vel actornatum, dicti noſtri conſanguinei in præmiſſis, recipiatis; præſentibus poſt annum minime valituris. In cujus rei teſtimonium has literas noſtras ſibi fieri fecimus patentes. Apud, &c.*

Letter compulſorial.

C. XIX. *JACOBUS, Dei gratia, Rex Scotorum, vicecomiti et ballivis ſuis de A. ſalutem. Mandamus vobis et præcipimus, quatenus omnes illos infra balliam veſtram, qui debita debent dilecto noſtro A. B. ad eadem debita, ei, vel ſuo certo actornato, latori præſentium, juſte, et ſine dilatione reddendum, ſecundum quod idem A. B. vel dictus ejus actornatus, dicta debita ſibi deberi ab eiſdem rationabiliter probare poterit coram vobis, prout juſtum fuerit compellatis, ita quod pro veſtro defectu amplius inde juſtam queremoniam non audiamus; præſentibus poſt annum minime valituris. In cujus rei teſtimonium, has literas noſtras ſibi fieri fecimus patentes. Apud, &c.*

Of writtis paſſand the greit ſeill, and firſt of confirmatiounis.

C. XX. ALL confirmatiounis upon charteris ar firſt writtin in form of ſignaturis, ſubſcrivit be the Prince, his Theſaurar, and Theſaurar Clerk, quhidder it be gevin *gratis*, or componit for; and being regiſtrat in the Theſaurar's bukis, and ſubſcryvit on the bak be his Regiſterar, ane precept in Latin is written to the ſignet, according to the ſubſtance and effect thairof, be the Clerk, writer of the ſignature, direct to the keipar of the privie ſeill, requiring him to paſs the like precept to the Chancellour, for paſſing of the confirmatioun under the greit ſeill, and as the ſignature ordourlie expede is warrand to the ſignet, ſwa the precept is warrand to the privie ſeill, and the privie ſeill to the greit ſeill: And quhen the ſaid laſt precept under the pri-

privie ſeill cumis to the greit ſeill, beirand the confirmatioun to be paſt in the mair form. Then the haill charter at lenth is contenit thairin, becauſe the clauſis at lenth are contenit in the precept; and it belongis to the Chancellour, and to the Directour of the chancellarie, and thair deputis, to ſé that the evidentis and charteris confirmit be ordourlie and ſufficientlie ſeillit and ſubſcrivit; and that thair be na novatioun, namelie of the halding, bot that it ather refer to the auld infeftmentis, contening richtis and ſervice aucht and wont befoir the confirmatioun, or then aggré in termis with the auld infeftment; in the quhilk cais the auld infeftment is ſichtit befoir the new be ſeillit, to the effect the King be not hurt in his halding; and alſwa, that thair be na ſuſpitioun of the charter, or evident confirmit, or razure in the dait, landis, proviſioun of the airis, or ſic uther ſubſtantial punctis; becauſe the confirmatioun beiris thir wordis: *De mandato noſtro viſam, lectam, inſpectam, et diligenter examinatam, ſanam, integram; non raſam, non cancellatam, nec in aliqua ſui parte ſuſpectam.* And this attendance is ſpeciallie to be gevin quhair the landis are haldin of the King; for gif the landis contenit in the charter, or evident confirmit, be haldin of a mediat ſuperiour, the conſideratioun is not ſa weichtie; becauſe the confirmatioun makis it na better nor it is, and ilk man is fré to prejudge himſelf. Alwayis the evident is diligentlie to be ſichtit, namelie the namis and ſubſcriptiounis of the gevaris and conſentaris; becauſe, according to the ordour of auld obſervit, the ſubſcriptiounis are not inſert in the confirmatiounis, bot credit is gevin to the chancellarie.

Of infeftmentis paſſing on reſignatiounis, or be new gift.

ALL charteris paſſing on reſignatiounis, or be new gift, are formit in the chancellarie, according to the warrand of the privie ſeill, quhilk proceidis upon a precept of the ſignet, and ſignature, as is befoir declarit, with na augmentatioun, except onlie the commoun clauſis of a charter efter *tenendas*; and thairin is obſervit the general and ancient ordour: Alwayis it is ſichtit, that the King be not hurt in the halding be new charter of reſignatioun, bot that it aggré with his richt that reſignis, in cais the ſervice be ſpecial, the tryall quhairof belongis to the Chancellour, and his deputis, keiparis of the greit ſeill. And in cais the King mak alteratioun in the halding, upon ſum weichtie and gude conſideratioun, then commounlie thair is mentioun maid in the narrative of the cauſe, and the Chancellour is weill aſſurit and reſolvit of the King's awin mind and pleaſour, befoir he paſs ony ſic infeftment, in cais it happin his Hienes to be circumveinit thairanent. C. XXI.

Of infeftmentis paſſing on a proceſs of appriſing.

THE proceſs of appriſing being ordourlie deducit, and put in form, is producit befoir the Lordis of counſal and ſeſſioun; and the ſamin beand ſichtit be thame, and fund ordourlie proceidit, gif the landis appriſit be haldin of the King, thay ordain preceptis to be direct C. XXII.

in dew form, for infeftment to the partie to quhom the landis and annuelrentis are appryſit; quhairupon ane precept paſſis firſt under the ſignet, quhairunto the proceſs, ſene be the Lordis, and ſubſcrivit be thame on the bak, is ane warrand, direct to the keipar of the privie ſeill, and thairfra to the chancellarie, contenand in the narratioun the haill proceſs of appryſing, and thairefter a donatioun to the partie, his airis and aſſignayis, of the landis, to be haldin of the King als frelie as thay wer haldin of befoir; and in the end of the charter is contenit ane reverſioun and regres to him fra quhom the landis are compryſit, upon payment of the ſowmis of monie for the quhilkis thay wer compryſit, with the expenſis maid upon the infeftment, conform to the act of parliament maid thairanent, ſwa that the ſamin be paid within ſevin zeiris. And upon the charter thair is gevin furth ane precept of ſaſine, under the teſtimonial of the greit ſeill, contening breiflie how the King has gevin to ſic a perſoun ſic landis and annuelrentis, quhilk pertenit to ſic ane uther perſoun of befoir, and wer dewlie appryſit for ſic ſowmis of money as is contenit in the proces and charter, *&c.* ordaning thairfoir the Schiref, or Judge ordinar, to give ſaſine conform to the charter maid thairupon. And this, and all uther preceptis of ſaſine that paſs upon charteris are maid of the dait of the chartouris, quhairupon thay are direct.

Privie Jeill.

C. XXIII. Namis of ſic letteris as onlie paſſis under the privie ſeill.

GIFTIS of eſchete of gudis movabill, wardis, and non-entreſſis, releifis, mariages of airis, preſentatiounis to benefices, letteris of reſpite, protectiounis, licences, exemptiounis to remane fra raidis and aſſiſes, giftis of offices, penſiounis, and all utheris quhilk are not accuſtumat of auld to paſs under the greit ſeill; quhairof the prices of auld conſuetude was wont to be, for the ſeill and writing togidder, xiij. *s.* iiij. *d. viz.* for the ſeill x. *s.* and for the writing, iij. *s.* iiij. *d.* Bot becauſe of the greit dearth of ſuſtentatioun, labouris and travel, expenſis for writing, in halding of ſervandis, furniſhing of paper, parchment, ink, walx reid and quhite, and utheris neceſſaris thairto pertening, quhilkis now in thir dayis ar augmentit in thair prices fra ane pennie to ten, thay have bene compellit of neceſſitie, fra time to time, to alter thair prices, as firſt fra iij. *s.* 4 *d.* to iiij. *s.* fra iiij. *s.* to v. *s.* and fra that to vj. *s.* viij. *d.* in ſingle letteris. Bot ſum of the foirſaidis letteris are of doubill price, to wit, quhen the letter, gift, or privilege, is grantit to ma perſounis nor to ane, then als mony donatouris, als mony paymentis: Bot it was ever obſervit of auld, that quhen the nombre of perſounis was greit, ſum eaſie compoſitioun and dreſs was takin with thame be the Notar, quha then was keipar of the ſeill, at his diſcretioun; ſwa that the parties had na cauſe to complene of rigourous dealing; and ſwa payment was takin in reſpect of the donataris, and not of the perſounis quhais eſchetis or wardis wer diſponit, as now is in uſe to be done.

Ler-

Letteris paſſand all the ſeillis.

LEGITIMATIOUNIS, naturalizatiounis, remiſſiounis, infeftmentis of reſignatioun, confirmatiounis, als weill upon landis haldin of the King, as of the kirk, and utheris ſuperiouris, proviſiounis to greit beneſices, ſic as archbiſhoprikis, biſhoprikis, abbacies, priories; quhairof the prices, according to antient cuſtume was ever keipt as followis, *viz.* All remiſſiounis, naturalizatiounis, and legitimatiounis contenand the name of ane perſoun, for the ſignet v. *s.* for the privie ſeill x. *s.* for the greit ſeill xl. *s.* And gif thay wer grantit to ma perſounis, payment was takin for ilk perſoun in maner as ſaid is of the privie ſeill. And the ſamin prices wer takin in like maner for infeftmentis and confirmatiounis, ſwa that the ſamin was haldin of the authoritie, not contening ane barony, lordſhip, nor erldome of land, nor maid to ſindrie perſounis in liferent and fie *reſpectivè*, nor had na liferent reſervit. And as to infeftmentis of baronies, lordſhippis, or erldomis, haldin of the authoritie, quhatever proviſioun, new diſpoſitioun, tailzie or reſervatioun, was contenit thairintill, thay paid for the ſignet xl. *s.* for the privie ſeill v. *lib.* and to the greit ſeill x. *lib.* and this was the greateſt price that ony man paid, and oftentimes les, bot never mair; for it can be ſchewin be the privie ſeill book in auld times, the greiteſt erldome within this realm paſt at the privie ſeill for iij. *lib.* All uther infeftmentis and confirmatiounis wer uſit in the commoun ſort: And gif the infeftment or confirmatioun contenit liferent, or fie, or reſervatioun, ilk liferent and reſervatioun paid als mekle as the fie of the rigour, quhilk was bot ſeldom uſit; for the keiparis oftentimes had conſideratioun on the parties, and delt with thame diſcreitlie; and according to the prices of the ſeillis, the writeris tuke thair payment, *viz.* the thrid penie, quhilk now of neceſſitie muſt be alterit, in reſpect foirſaid. The ſamin ordour was obſervit of the greit benefices and prelacies quhilk paſt throw all the ſeillis, quhilk is fallin bot ſince his Majeſtie's mother came out of *France*; for of befoir thay wer providit at *Rome*; and becauſe thair expenſis uſit to be greit thair, it was thocht expedient, thay ſould pay at hame as new infeftmentis. It is bot of late that ony payment was takin for infeftmentis of tailzie, bot the infeftment of fie and liferent maid all the reſt fré, as the auldeſt practitioneris of writeris knawis, and have ſene oft. C. XXIV.

Commiſſariat.

Inſtructiounis gevin to the Commiſſaris of *Edinburgh*, *Anno Domini*, 1563.

I. IN the firſt, that the ſummoundis, haill proceſſes and ſentences, be in the vulgar tongue.

II. That all ſummoundis be direct ather *ad inſtantiam*, or *per libellum*, as the Judges, be thair diſcretioun, thinkis expedient, conform

form to the inſtructiounis to be gevin to thame thairupon; that is to ſay, *ad inſtantiam, in vilibus, levibus, & facilibus*, and ſpeciallie quhair the perſewar is able to refer the ſamin to the aith of the defendar, or to prove it *ſtatim in campo. In cæteris gravibus, arduis et difficilibus, et quæ requirunt altiorem indaginem*; that the firſt ſummoundis be libellit, to the effect that the partie perſewit may be compellit to anſwer *in primo termino ſummonitionis*, be grant, denial, or exceptioun: Quhilk diſtinctioun of libelling or not libelling of the ſummoundis is referrit to the arbitrament of the Judge, as he will anſwer to the Quene's Majeſtie thairupon; and ſiclike, the day of compeirance and anſwer to be referrit to the Judge's diſcretioun, efter the qualitie of the cauſe, and diſtance of the place quhair the defendar dwellis.

III. The ſummoundis to be under the ſignet of office of the ſaid commiſſariat; in the quhilk ſall be graven ane crownit thiſſel, with M. R. and in the circumſcriptioun, S. OFFICII COMMISSARIATUS, with the name of the place of the ſaid commiſſariat; and the ſeill, beand in greiter form, beirand ſiclike. And the Clerk to write his name and ſurname at lenth in all ſic letteris; and this ordour to be obſervit in everie juriſdictioun. For the quhilk ſummoundis *ad inſtantiam*, with the ſignet, the partie ſall pay viij. *d.* and utheris letteris quhatſumever, and writtis, to be of the prices quhilk the taxt rule heirefter following beiris. And the ſummoundis *ad inſtantiam*, or libellit ſummoundis, to be gevin to ſummound als mony as the perſewar deſires to compeir at ony ane day. And the day being bypaſt, the ſummoundis not to be uſit aganis ony uther partie at ony uther day thairefter; and to be direct, *To our lovitis*, with ane blank left in the letter to put in the executer's name; and thairefter the letter to beir *the executer of thir our letteris*: Quhilk executer ſall be ane ſufficient man, havand twa witneſſis at the leiſt with him the time of executioun, and to be ſpecifyit with him in the indorſatioun: Quhilk ſummoundis indorſit being preſentit be the perſewar, or his Procuratour, ſall be reſſavit be the Commiſſaris, or thair Clerk, and kept ſurelie, to the effect that gif the partie perſewit pleaſis to oppone aganis the executioun, he may be heard thereon; and the partie perſewar uſeand the ſaid ſummoundis, and executioun thairof, be himſelf, or his Procuratour, ſall be haldin for the crime of falſet, in cais the ſamin be improvin; provyding alwayis that the offering to impreive the executioun ſtop not the proceiding in the principal cauſe; And in cais ony partie offer to mak improbatioun of the ſaid executioun, or ony uther writ producit, or uſit in proceſs, that the partie find cautioun, conform to the act of parliament.

IV. The executioun of the ſaid ſummoundis to be uſit conform to the actis of parliament; and for the copie of the ſummoundis *ad inſtantiam*, the partie defendar to pay ij. *d.* and for the copie of the libellit ſummoundis, vi. *d.* And gif the partie be not fundin, to quhom the copies ſould be deliverit, the payment thairof to be taxit in the expenſis of the pley, with all uther expenſis of pley, and executioun of the ſummoundis.

V. The day of the ſummoundis *ad inſtantiam* being cum, and baith the parties compeirand be thameſelfis, or be thair Procuratouris, the perſewar ſall propone his petitioun *verbo*, and the partie

tie defendar ſall be haldin incontinent to anſwer *verbo*, ſwa that the petitioun of the cauſe proponit excede not the ſowme of xl. *lib.* and the Judge ſall then put thame to ane point, ather of grant, deny, or exceptioun; and then incontinent to condemn, or aſſign ane term to ather of the parties for proving of baith thair alledgeances; and immediatlie thairefter to cauſe ane act be maid of the alledgeances of baith the parties. And this to be underſtuid in cais the defendar be convenit upon his awin deid; utherwayis, gif it be *in facto antiquo*, or ane uther man's deid, *vel ubi facti qualitas requirit ampliorem dilationem ad deliberandum, reo concedendam*, the Judge to aſſign ane term to the defendar to anſwer thairto, as he ſall think expedient, efter the qualitie of the cauſe. And gif it be abone xl. *lib.* the perſewar ſall then *ſtatim* propone his petitioun *apud acta*, and the Judge ſall aſſign ane term to the defendar to anſwer thairto, as he ſall think expedient, efter the qualitie of the cauſe. And gif the partie defendar compeiris not, the partie perſewar proponand his petitioun *apud acta*, the Judge ſall aſſign ane term to him to preive the ſamin, and to warn the partie thairto. And gif it be ane libellit ſummoundis, the defendar ſall be haldin the day of compeirance to anſwer, be grant, deny, or exceptioun: and the Judge to decide the ſamin then incontinent, or at ane ſhort day, with all poſſible diligence; and the reſt of the proceſs to be deducit efter the form uſit befoir the Lordis of ſeſſioun, *uſque ad ſententiam definitivam incluſivè*.

VI. *Item*, It ſall be alſwa leaſum to the perſewar, the firſt day of compeirance, to alter or amend his libel, *addendo vel diminuendo*, the partie defendar compeirand be himſelf, or be his Procuratour; and in that cais the Judge to aſſign ane new day to the defendar, *ad reſpondendum*, as he ſall think expedient, lang or ſhort, efter the qualitie of the cauſe.

VII. *Item*, That the Judges be ſharp and auſtere to the Advocatis, that thay uſe na frivole alledgeances, and ſnib thame thairfra, firſt be pecunial panis, and ſyne be deprivatioun, gif thay perſiſt, for the quhilkis the ſaidis Judges ſall be haldin to anſwer to the Quene's Majeſtie, gif thay ſuffer the Advocatis utherwayis to do.

VIII. *Item*, That the Judges direct out thair preceptis for ſummounding of witneſſis to compeir befoir thame to beir witneſſing in the cauſe, under ſic pecunial panis as the Judges ſall think expedient, for the qualitie of the cauſe, and of the perſounis that beis ſummoundit: And gif the witneſſis contemnis, and compeiris not, the unlaw to be upliftit be the Judges Officiar, and the ſaid Officiar to have powar to poind thairfoir; and the panis to be applyit, the ane half thairof to the Judge, and the uther half thairof to the puir folk: And gif the witneſſis compeir not for the firſt precept and ſummoundis, the partie to have a new precept to ſummound the witneſſis not compeirand, under greit pecunial panis, to be appointit at the diſcretioun of the Judge, or to raiſe letteris be deliverance of the Lordis of ſeſſioun, for compelling of thame to compeir, under the pane of horning, as the Judge ſall think expedient.

IX. That at the examinatioun of all witneſſis, the Judge, with the Clerk, be preſent.

X. It ſall be leaſum to the Judge to direct furth inhibitiounis upon the intromettouris with teindis, ſiclike as the conſiſtorie

was wont to do of befoir: Als, that the Commiſſaris ſall na wayis direct out inhibitiounis to uther temporal Judges, inhibitand thame to procede in cauſis bot allanerlie in thay cauſis quhair the temporal Judge had na juriſdictioun of befoir.

XI. That the Judges taxt the expenſis of pley of all cauſis quhair ſentences are obtenit befoir thame, and that richt heichlie.

XII. That all expenſis be taxt and inſert in the principal decrete, or ſentence, and the precept to be direct out, for executioun of the ſentence, beirand to poind, als weill for the ſaidis expenſis, as for the principal ſowme.

XIII. *Item*, It ſall be leaſum to the Commiſſaris to cauſe thair Clerkis regiſtrate contractis, obligatiounis, actis, and uther writtis, gevin *in ſcriptis*, ſubſcrivit be the parties, or Notaris at thair command, in thair bukis; quhilkis being regiſtrat, and thair decrete and authoritie interponit thairto, fiftene dayis efter the term or time of the fulfilling of the contract, obligatioun, act, or uther writing being outrun, the Lordis of counſal to give out letteris in the four formis, or of poinding, for fulfilling the ſamin, as wer wont to be gevin upon perſounis quhilkis of befoir lay xl. dayis under curſing; ſwa that the executioun thairof be ſocht within ten zeiris efter the term of the fulfilling of the contract, obligatioun, act, or uther writing: And the ten zeiris being outrun, the partie to call his adverſar to heir and ſé letteris gevin conform to the ſamin. Provyding alwayis, that the contract, obligatioun, act, or uther writing, in the body thairof, befoir the regiſtratioun of the ſamin, beir, that thay are content the ſamin be regiſtrat in the ſaidis bukis, with letteris of horning or poinding to follow thairupon, for compelling of thame to fulfill the ſamin: And that na contract, obligatioun, act, or uther writing be reſſavit or regiſtrat, without the Judge be preſent to heir the ſamin red, and interpone his authoritie thairto, and know the parties contracteris, except it be in licht cauſis, not exceiding the ſowme of x. *lib.* in the quhilk cais of that avail at the maiſt allanerlie, it ſall be leaſum to the Clerk him alane to reſſave the ſamin.

XIV. That the Commiſſaris ſall be Judges to all contractis regiſtrat in thair bukis, quhairunto thair authoritie is interponit, and the partie ſubmittand him to thair juriſdictioun, *et hoc cumulative, ſed non privative*: And ſiclike, to all uther contractis not beand regiſtrat in uther Judges ordinaris bukis; for fulfilling quhairof the partie is ellis ſworn, or ſall happin thairefter to be ſworn, *et hoc cumulative, et non privative.*

XV. And as for uther matteris, quhairin the aith is not interponit, and perſewit as maid *fide media*, and quhilkis the perſewar will refer to the defendar's aith, ſwa that the ſamin excede not the ſowme of xl. *lib.* the ſaidis Commiſſaris to be Judges, *et hoc cumulative ſed non privative.* And alſwa, in all uther ſmall actiounis, quhidder thay be *fide media* or not, of widowis, pupillis, and ſiclike uther puir and miſerabill perſounis, not exceiding the ſowme of xx. *lib.* quhilkis wer wont to be decidit in the conſiſtorie of befoir, *et hoc cumulative*, as ſaid is.

XVI. The Judge, gevar of the ſentence, to direct his precept to his Officiaris, to be creatit be him for executing thairof, or to ony uther the Queno's Grace's Officiaris of armis, Schireffis, Stewartis, Baillies, thair deputis, Proveſtis and Baillies of burghis, and Baronis

ronis Officiaris, at the optioun of the partie obtenar of the decrete, as he ſall require, contening ane intimatioun and charge to the partie condemnit to fulfill the ſentence within xv. dayis nixt efter the charge; quhilkis xv. dayis being bypaſt, ony of the ſaidis Officiaris to poind, diſtreinzie, and appryſe for the liquidat ſowmis contenit in the ſentence, and mak payment to the partie obtenar thairof: And gif it be *in facto*, the precept to be direct furth be the Judge, to be execute with ſiclike charge of xv. dayis, and farder, at the Judge's diſcretioun, *ſecundum cauſæ exigentiam*; quhilkis dayis being bypaſt, and the ſaid precept of the making of the ſaid charge dewlie execute and indorſit, with the ſentence, being producit befoir the Lordis of counſal, the Lordis to grant letteris to charge the parties condemnit, (*reos*) to fulfill the ſaid ſentence within ſa mony dayis as the ſaidis Lordis ſall think expedient, under the pane of rebellion, and thay failzeing, to put thame to the horn: And ſiclike, the Lordis of ſeſſioun to direct letteris of poinding upon the ſaid Judge's ſentence, gif neid beis, xv. dayis being ſiclike bypaſt; and the letteris or preceptis, ather of the ſaidis Lordis or Judges foirſaidis, to beir in ſpecial to poind for the expenſis of the letter or precept.

XVII. The pane of the deforcement of the ſaidis Judges Officiaris to be als greit as gif the Quene's Grace's Officiar of armis wer deforcit in executioun of hir Hienes letteris, under hir ſignet, and to be callit befoir the Lordis of counſal, or Commiſſaris, as the partie perſewar pleaſis.

XVIII. The firſt ſentence to be execute, notwithſtanding ony appellatioun, or ſummoundis of reductioun.

XIX. All appellatiounis or reductiounis of ſentences gevin be ony inferiour Commiſſaris of this realme, to be formit be ane libellit ſummoundis of reductioun, and to cum unto, and be decidit be the Commiſſaris of *Edinburgh*; and the reductioun of ony ſentence gevin be the Commiſſaris of *Edinburgh*, *in prima inſtantia*, or *ſecunda*, of appellatiounis or reductiounis interponit fra uther Commiſſaris, to be judgit be the haill Lordis of ſeſſioun, or ane part of thame, quhilk ſall be appointit thairto be the remanent of the ſaidis Lordis, *uſque ad ſententiæ definitivæ prolationem excluſive*.

XX. The reductioun and retreiting of ſentences gevin be inferiour Commiſſaris, or be the Commiſſaris of *Edinburgh*, *in prima* or *ſecunda inſtantia*, to be perſewit be libellit ſummoundis, as ſaid is, within zeir and day efter the geving of the ſentence, the partie that micht have occaſioun to raiſe ſummoundis of reductioun or appellatioun being of perfeit age, and not out of the realme, *ex cauſa neceſſaria et probabili*: *Alioqui*, that the ſentence gang *in rem judicatam*, and be not reduceabill nor retreitabill, nather *ex iniquitate*, *nullitate*, nor na utherwayis, *ceſſante alio legitimo impedimento*.

XXI. That ane form be maid of the haill ordour of proceſs uſit befoir the Lordis of ſeſſioun.

XXII. That the inferiour Commiſſaris ſall be haldin to bring, or ſend, the regiſter of all teſtamentis quhilkis thay ſall happin to confirm, to the burgh of *Edinburgh*, to be regiſtrat, or to remane there, and to mak compt and deliverance of the quottis thairof.

XXIII. Quhen ony extractis of teſtamentis are ſocht, the Clerk in the extract to put in the dait of the teſtament, and ſa mekil of the ſamin as concernis the ſeiker thairof; and na wayis to deliver the co-

copie of the haill teſtament, without it be neceſſare, at the diſcretioun of the Judge.

XXIV. That all teſtamentis, maid or to be maid, quhilkis ſall reſſave confirmatioun, be maid in preſence of the Miniſter, befoir witneſſis, or in preſence of ane Notar, befoir witneſſis, or ſubſcrivit be the perſoun, maker thairof, befoir witneſſis, or utherwayis as accordis of the law.

XXV. And all teſtamentis, quhairof the deid's part exceidis not the ſowme of fifty *lib.* to be confirmit be the particular Commiſſaris, everie ane within his awin juriſdictioun: And quhair the deid's part exceidis the ſowme of fifty *lib.* the teſtamentis to be confirmit be twa of the Commiſſaris of *Edinburgh* at the leiſt.

XXVI. That everie Commiſſar, within the juriſdictioun limited to him, confirm the teſtamentis of the perſounis deceiſſand within his juriſdictioun, ſwa that the deid's part of the gudis within his juriſdictioun excede not the ſowme of fifty *lib.* And gif the perſoun deceiſſis, and has gudis in uther juriſdictiounis, that the Commiſſar of that juriſdictioun confirm the teſtament of ſa mekil gudis as is within his juriſdictioun, ſwa that the deid's part excede not the ſaid ſowme of fifty *lib.* And gif it excede that ſowme, to cum to the Commiſſaris of *Edinburgh*, to be confirmit be thame.

XXVII. That everie Commiſſar within his juriſdictioun cauſe the the Miniſteris, or Reidaris, within everie parochin, give in to him the namis of the parochineris deceiſſand thairin, ilk thré monethis anis, at the fardeſt, *viz.* upon the firſt dayis of *Januar*, *April*, *Julij*, and *October*; and the Commiſſar nottheles to mak diligent inquiſitioun thairof, to the effect that the ſaidis Commiſſaris may cauſe warn the executouris to ane competent day, to confirm the teſtamentis quhairin thay are conſtitute executouris, with certificatioun to thame, and thay failzie, datives ſall be gevin, conform to the commiſſioun grantit thairupon; and gif thay cum not, to give datives, edictis, and uther lauchful premonitioun being maid, and preceiding alwayis; and the ſaidis datives to be gevin to the narreſt of kin, abil thairto, and willing to reſſave the ſamin, upon cautioun to do thairintill as accordis of the law to all parties havand interes; and quhair na teſtament is maid, to give datives in maner foirſaid.

XXVIII. And gif the deid's part excede the ſowme of fifty *lib.* that the particular Commiſſaris advertiſe the Commiſſaris of *Edinburgh*, to the effect that thay may cauſe the teſtament be confirmit, or give datives in maner abone reherſit, and give command to the Collectouris of the quotis to mak the expenſis thairupon.

XXIX. That the particular Commiſſaris mak twa regiſteris of the teſtamentis, ane to remane with thameſelfis, and ane uther to be brocht zeirlie to the Commiſſaris of *Edinburgh*, to be put and remane in the principal regiſter, and to bring or ſend the quottis of the teſtamentis quhilkis thay ſall happin to confirm, to the burgh of *Edinburgh*, to be deliverit; and for thair travel thay ſall have twelve pennies of everie pund of the ſaidis quotis of the teſtamentis that thay deliver in *Edinburgh*.

XXX. And the ſaidis teſtamentis, nor nathing contenit in thame, ſall mak faith, nather for executouris nor intromettouris, quhill thay be confirmit; and twelve pennies of everie pund, to be the quotis

of

of all teſtamentis, baith greit and ſmall, quhilkis ſall be confirmit, als weill datives as utheris.

XXXI. The particular Commiſſar ſall have na powar to confirm the teſtamentis *ad extra*, bot allanerlie the Commiſſaris of *Edinburgh*; quhilkis likewayis ſall have na powar to confirm teſtamentis *ad extra*, bot of particular ſowmis or actiounis, to ane certane quantitie, quhilkis ſall be expremit in the confirmatiounis.

XXXII. And the Commiſſaris of *Edinburgh* to give datives upon the teſtamentis confirmit be the inferiour Commiſſar, *quantum ad omiſſa, vel male appretiata*, or utherwayis to correct thame as the cauſe requiris.

XXXIII. That the profitis of all ſummoundis, actis, contractis, obligatiounis, ſentences, tranſumptis, confirmatiounis, and regiſtering of teſtamentis and uther writingis quhatſumever, to be actit and regiſtrat in the Commiſſaris bukis, and extractis thairof, and likewayis the profit of the ſignet, and ſeill thairof be dividit in maner following; that is to ſay; The Judge ſall have the twa part thairof, and the Clerk the thrid part, the Clerk alwayis finding paper, ink, walx, and writing chalmer: And this to be underſtuid in all the particular commiſſariatis throuchout the realme, by the four Commiſſaris of *Edinburgh*; quhilkis four, compting and allowing firſt the twa part of the profitis foirſaidis to be equallie dividit amangis thame four, ſall have ſa mekil mair of the reddieſt of the quotis of the teſtamentis deliverit and paid to thame be the Collector thairof, as will mak furth thré hundreth merkis of zeirlie fie to everie ane of thame; and to this effect that thair be ane letter maid under the privie ſeill, commanding the Collector to pay thame zeirlie induring the Quene's Majeſtie's pleaſour.

XXXIV. In cais ony particular Commiſſaris fall in ſic heavie ſeiknes, that he may not give attendance to his office, or that ony ſic declinatory excuſe or exceptioun being of veritie, be proponit aganis him, as micht ſet or decline ane ordinar Schiref, that particular Commiſſar ſall advertiſe and certifie the Commiſſaris of *Edinburgh* thairof, and thay ſall depute ane uther, as thay ſall think expedient, to ſit, cognoſce, and decide in the cauſis foirſaidis.

XXXV. *Item*, Gif ony doubtis or queſtiounis quhilkis cannot now be providit and forſene, happin to reſult heirefter, concerning the uſing of the juriſdictioun of the commiſſariat laitlie erectit be the Quene's Majeſtie, the Lordis, makeris of thir inſtructiounis abone writtin, ſall have powar to mak farther inſtructiounis thairanent, and to eik, pair, and alter the foirſaidis inſtructiounis at all times, as thay ſall think expedient.

Prices.

THE ſummoundis *ad inſtantiam*, with the ſignet, viij. *d.*

The libellit ſummoundis, with the ſignet, not exceiding half a throuch of paper compactlie writtin, as the Clerkis of the ſignet write, ij. *s.*

The libellit ſummoundis, exceiding half a throuch of paper, compactlie writtin, as ſaid is, iij. *s.*

The putting of ane act in the buke iiij. *d.* and farder, as the writing

ting ſall be of quantitie, at the diſcretioun of the Judge, quhill farder ordour be takin.

The extracting of the ſamin, als mekil, and farder at the Judge's diſcretioun.

And the reſt of the particular Commiſſaris and Clerkis of the realme to follow the prices and ſtile of the Commiſſaris, and thair Clerk of *Edinburgh*.

The ſummoundis to ſummound witneſſis quhidder the partie or his Procuratour be warnit *apud acta* or not, viij. *d.*

Item, For pronuncing of ſentences in ſmall actiounis, of the avail of xx. *lib.* or within the ſamin, quhilk wer wount to be callit decreitis, iij. *ſ.* iiij. *d.*

Item, For pronuncing of uther ſentences of greiter avail, vj. *ſ.* viij. *d.*

The precept executorial upon the ſentence, ij. *ſ.*

The Inhibitioun, ij. *ſ.*

For a precept to arreiſt in cauſis depending befoir thame, ij. *ſ.*

For ſummoundis to heir executouris datives gevin, ij. *ſ.*

For regiſtering of contractis, obligatiounis, or ſiclike evidentis, not exceiding half a throuch of paper, iij. *ſ.* iiij. *d.*

For regiſtering of contractis, obligatiounis, or ſiclike, exceiding half a throuch of paper, vj. *ſ.* viij. *d.*

For extracting thairof, ſubſcrivit be the principal Clerk, iij. *ſ.* iiij. *d.*

The tranſumpt of evidentis, or uther writingis in parchment, under the ſeill of office, xiij. *ſ.* iiij. *d.*

The extracting of the proces, writtin compactlie as the Clerkis of the ſignet write, ilk throuch, on baith ſides, ij. *ſ.*

Item, The four Commiſſaris of *Edinburgh* ſall ſubſcribe thir inſtructiounis foirſaidis to all the inferiour particular Commiſſaris, ſwa far as concernis thair part thairof.

Subſcrivit be our ſoverane Lady, at Edinburgh, *the* 12*th day of* March, 1563, *and of her regne the* xxij. *zeir.*

Further inſtructiounis.

At Edinburgh, *the* xxvj. *day of* March, MDLVII.

THE quhilk day the Lordis of counſal and ſeſſioun maid the inſtructiounis and ordinances under-writtin, and ordanit the ſamin to be publiſht; of the quhilk the tenour followis:

I. *Inprimis*, That in all time cuming nomination of executouris be provin be writ allanerlie.

II. *Item*, That na debtis, as awand be the deid, be inſert or reſſavit in teſtamentis dative, for avoiding of fraud and hurt of the bairnis, or utheris havand interes; bot the haill gudis to be gevin up fré, and the quot thairof paid: And in cais that ony creditour of the deid, within zeir and day nixt efter his deceis, obtenis ony decrete lauchfullie aganis the executour, or perſewis and inſiſtis diligentlie thairanent; in that cais, the Collectour of the quotis ſall, efter the recoverie of the ſaid debt, refound to the executour, aganis quhom it is recoverit, the quot of the ſaid debt, *pro rata debita.*

bita. And in cais the creditour perſew not, nor obtain not his debt within the ſpace foirſaid, and perſewis not nor inſiſtis dlligentlie, as ſaid is, thairanent, in that cais the Collectour ſall not be haldin to refund the quot of the ſaid debt to the executour; bot the quot of the ſamin debt ſall be allowit be the creditour, in part of payment of the debt efter recoverit be him, be reſſoun of his negligence: And this ordinance to be kept be the haill Commiſſaris.

III. *Item*, That na debtis, as awand be the deid, be infert in the teſtament teſtamentar, without thay be given up be the deid: That ſic ordour be obſervit thairanent as in teſtamentis datives, anent the recovering of the debtis, and repetitioun of the quotis.

IV. *Item*, That my Lord chancellour, Preſident, and Lordis of the ſeſſioun, be confirmit executouris to all ſic perſounis as ſall have greit teſtamentis, datives being gevin thairto dewlie of befoir, utheris having interes not confirming the ſamin: And that the Procuratour-fiſcal of *Edinburgh* perſew, in the ſaidis Lordis namis, for the gudis of the deid, to quhom the ſaidis Lordis ſall be confirmit executouris: And that letteris be direct, to charge the intromettouris with the ſaid deid's gudis, to inbring and deliver the ſamin to the ſaidis Lordis, and thair Collectouris.

V. *Item*, To the effect that the debtis may be the better knawin, everie Commiſſar, within his awin juriſdictioun, ſall call the intromettouris with the deid's gudis, datives being gevin, as ſaid is, to give inventaries thairof: And in cais the intromettouris will not compeir to the effect foirſaid, then the Commiſſaris foirſaidis ſall cauſe ſummound four or five of the deid's narreſt neighbouris, and utheris, quha beſt knawis the ſamin, quha, being ſworn, ſall give up inventary of the deid's gudis, and declair under quhat diviſioun the ſamin cumis: And the expenſis to be maid heiranent to be modifyit zeirlie be the ſaidis Commiſſaris at thair compt making to the ſaidis Lordis.

VI. *Item*, That everie inferiour Commiſſar have ane Procuratour-fiſcal, quha ſall be ane honeſt and diſcreit man, and perſew all commoun actiounis, and ſall be decernit executour dative to all teſtamentis within the juriſdictioun quhair he ſervis, in cais the narreſt of kin to the deid confirmis not the teſtament in dew time. And ilk Procuratour-fiſcal ſall find cautioun, that the gudis he ſall happin to intromet with ſall be furthcumand as effeiris, and ſall zeirlie mak compt, reckning and payment of the gudis that he ſall happin to reſſave, or intromit with, to the Lordis Collector, and ſall have iij. *s.* of ilk pund quhilk he bringis in and makis payment to the ſaid Collectour.

VII. *Item*, Ilk Fiſcal ſall twiſe in the zeir, *viz.* at *Mid-ſummer* and *Zuill*, ſend the namis of all perſounis that ſall happin to deceis within thair juriſdictioun, als weill of greit as of ſmall teſtamentis, to the Procurator-fiſcal of *Edinburgh*.

VIII. *Item*, That letteris be direct zeirlie, to charge all the inferiour Commiſſaris to compeir befoir the Lordis of ſeſſioun and Commiſſaris of *Edinburgh*, bringing with thame thair commmiſſiounis and regiſteris, and to reſſave all ſic inſtructiounis as it ſall pleis the Lordis to give thame; with certificatioun to thame, gif thay failzie, thay ſall be diſchargit *ſimpliciter*.

IX. *Item*,

IX. *Item*, That all perſounis namit, or to be namit, executouris, ſall confirm thair teſtamentis within ſax monethis efter the deceis of the deid.

INJUNCTIOUNIS and reulis ſet down and appointit be the reverend Fathers in God, Archbiſhopis and Biſhopis of this kingdome, aſſemblit at Edinburgh *the ſecund day of* March, *the zeir of God, Ane thouſand, ſax hundred and ten zeiris, for the Commiſſar Clerkis, Procuratour-fiſcals, and uther memberis of court, of the haill eccleſiaſtical judgmentis, havand commiſſioun of the ſaid reverend Fatheris.*

Ze ar, be vertew of zour commiſſioun, to decide in cauſis beneficial, matteris of teindis, cauſis matrimoniall, ſic as nullities and reductiounis of marriages, of impotencie, adherences, (except onlie actiounis of divorcement, and deciſiounis of baſtardies, and adherence, quhen the ſamin ſall be connexit with the queſtioun of lauchfulneſs of marriage, or adulterie, quhilkis ar reſervit to the Commiſſaris of *Edinburgh* thair judicatorie) in matteris of ſclander, confirmatioun of teſtamentis, greit and ſmall, within zour boundis, all cauſis teſtamentarie, and in all uther matteris quhairin the aith of partie is requirit, gif the ſoume exceid not fourtie pundis; and all utheris actiounis of widowis, and puir perſounis, gif the ſamin exceid not twentie pundis; or in quhatſumever uther cauſis quhairin the parties ſubmit thameſelfis to zour juriſdictioun.

Lat all zour ſummoundis *in rebus levibus et facilibus*, ſpeciallie gif the perſewar refer the ſamin to the defendar's aith, or offeris inſtant pruif, be *per inſtantiam*.

In thir ſummoundis *ad inſtantiam*, ze muſt cauſe the perſewar propone his petitioun *verbo*, and the partie anſwer ſiclike, gif the cauſe exceid not fourtie pundis; and ze ſall put the parties ather to grant, deny, or except; and aſſign ane term to thame for proving of thair alledgeances, cauſing ane act to be maid thairupon preſentlie: Bot gif the partie be not convenit upon his awin deid, bot upon ane uther man's, or gif it be *in facto antiquo*, or gif *facti qualitas* require *ampliorem dilationem ad deliberandum*, ze ſall aſſigne, according to the qualitie of the cauſe, ane term to the defendar; and gif he compeir not, give the ſamin to the perſewar's aith.

In cauſis gravibus et arduis, lat zour firſt ſummoundis be libellit, that the partie may preſent himſelf to anſwer: And give na ſentence, ſpeciallie in cauſis beneficial, without having firſt acquaintit zourſelfis with the cauſe, and eſtait thairof.

Ze ſall have cair that zour ſummoundis be execute alwayis be ane ſufficient man, befoir twa witneſſis at the leiſt, and that the ſamin being returnit indorſat, be kept be the Clerk, in cais the executioun be queſtiounit; and zit ze ar not to ſtay the proceiding of the principal cauſe, upon ony offer of improveing the executioun.

The firſt day of the compeirance, the perſewar ſall have place to mend the libel; and in that cais the defendar ſall have ane day *ad reſpondendum*.

Ze ſall ſummond witneſſis in all cauſis as ze ſall have occaſioun, and under ſic pecunial panis as ze have bene accuſtumat.

At

At the examinatioun of all witneſſis, zourſelfis ſall not fail to be preſent with the Clerk, excluding all utheris.

Ze ſall not ſuffer ony of the Advocatis, in thair procuring, to uſe frivolous alledgeances.

In the adviſing of proceſſis, ze ar not to uſe the advice of ony of the Procuratouris, or conſult with thame thairanent, nather to appoint ony of thame to be preſent at the adviſing of the ſamin.

In zour ſentences, let conſideratioun be had of the expenſis of pley, and the ſamin to be inſert in the decrete.

Ze may direct zour preceptis to Officiaris of our commiſſariatis, or Officiaris of armis, or the Officiaris of Proveſt, Baillies, and Baronis, at the partie's deſyre.

Gif ony ſall deforce zour Officiar, ze may be Judge thairunto, and inflict the like panis as ar injoynit aganis the deforcing of ane Meſſenger of armis.

Gif ony temporal Judge within this realme will proceid in cauſis belonging to zour juriſdictioun, ze ſall direct preceptis to inhibite thame from all proceiding thairintill.

Ze ſall give furth inhibitiounis upon teindis, greit and ſmall, as ze ar deſyrit, upon the ſicht of the partie's titill allanerlie.

Gif ſummoundis of reductioun be libellit aganis ony of zour decretis, befoir the Commiſſaris of *Edinburgh*, ze may notwithſtanding cauſe put zour ſentence to executioun: And gif the ſamin be not perſewit within zeir and day, the partie being of perfeit age, and within this realme, zour decrete ſtandis unreducit.

That the Commiſſaris and Clerkis be reſident in the place of thair commiſſariatis, under the pane of deprivatioun, except be the Archbiſhop's or Biſhop's licence, upon grave occaſioun.

That ze, zour Clerkis, and Advocatis, ſall weir gownis, and that betwixt and the firſt day of *April* nixt to cum.

That ane new ſeill be maid be zou, according to the pattern to be ſent be the Archbiſhoppis, and Biſhoppis, to zou, conform to his Majeſty's warrand.

That ze ſall mak twa regiſteris of the teſtamentis to be confirmit be zou, the ane to be keipt be zour Clerk, and the uther to be deliverit to the Archbiſhop, or Biſhop.

That zour Clerk, the time of the making of zour comptis twiſe in the zeir, give his aith, *viz.* the firſt day of *Maij*, and the firſt day of *November*, that thair ar na mair teſtamentis confirmit than theſe quhilk ar buikit in the buik, then to be producit.

That na precept be gevin furth, without the decrete be firſt extractit.

In cais ony of zou ſall happin to fall in ony ſeiknes and diſeaſe, ſwa that ze may not await and give attendance to zour office, or gif it ſall happin ony ſic declinatour exceptioun (being of veritie) to be proponit aganis zou, as micht ſet or decline Schiref or Judge, in that cais ze ſall ſchaw the Archbiſhop or Biſhop of the ſamin, quha then ſall depute ane uther, quha ſall be thocht maiſt apt and meit to ſit, cognoſce, and decide, in the cauſis foirſaidis.

That ze ſall find ſufficient cautioun and ſovertie to compeir befoir the Archbiſhop, or Biſhop, twiſe in the zeir, *viz.* the firſt day of *Maij* and *November*, and give juſt compt of zour intromiſſioun with the quotis, and payment of zour contributioun for the Com-

miſſaris of *Edinburgh*, under the pane of five hundreth pundis. This is to be extendit to zou quha wantis quot maſteris, ſwa that cautioun ſall be fund be zou all for contributioun.

Gif ony of zou, or zour Clerkis, confirm ony teſtament, and mak not compt thairof to zour Archbiſhop, or Biſhop, the ſaidis dayis, the ſamin beand ſufficientlie verifyit, zour office thairby ſall *ipſo facto* vaik.

That na Procuratour procure, without licence of the Archbiſhop, or Biſhop, and that zour Officiaris ſall be creatit be thame, and find cautioun for thair fidelite and diligence.

That the profit of all ſummoundis, ſentences, tranſumptis, regiſtratiounis, confirmatiounis of teſtamentis, regiſtratioun of all takkis, contractis, obligatiounis, and utheris writtis quhatſumever, and extractis of the ſamin; as likewayis, the profit of the ſeill and ſignet, to be dividit in maner following; that is to ſay, The twa part thairof to the Commiſſar, and the thrid part to the Clerk, he alwayis finding paper, ink, walx, and writing-chalmer.

And that ze may give ane better compt of zour proceidingis, ze ſall be cairful that ane regiſter be keipt of all actis and decreitis that ſall happin to be pronuncit be zou.

Ordour to be obſervit be zou in the confirmatioun of all teſtamentis.

Ze ſall have ane cair, that all edictis ſall be preſentit generallie at all the paroche kirkis, twiſe at leiſt in the zeir: And gif ony partie deſire particular edictis, as the occaſioun offeris, ze ſall cauſe give thame furth, and the general edictis to be gevin *gratis* to the Procuratour-fiſcal.

The edict being preſentit, and the perſoun or perſounis having beſt richt being decernit executour to the defunct, that the inventar be gevin up be the executour, and to mak faith upon the treuth of the ſamin.

Gif the wife be deceiſt, and her husband gevis up the inventar baith of gudis, geir, debtis awand be him and to him, ſic debtis as he gevis up, and by his aith ſwearis to be trew debtis, ſould be deducit aff the fré geir; alwayis gif the executour ſuſpect ony fraud, that the debtis ar gevin up to exhauſt the fré geir, and thinkis guid to omit the ſamin.

Gif the man himſelf, or the perſoun quhais teſtament is to be confirmit, give up the inventar or debtis, with his awin mouth, in ane teſtament teſtamentar, ſic debtis as thay give up mon be allowit: Bot gif thair be na teſtament teſtamentar maid be the defunct, or that in the ſamin he has ordanit his executour to give up the inventar of his gudis, geir and debtis, in that cais na debtis to be allowit, (the dewtie of the ground, teind dewties, and ſervant fees in that zeir quhairin he deceiſt, exceptit) quhilkis deductiounis beand maid be the perſoun deceiſt, he leivand behind him wife and bairnis, gif ony of the bairnis be unforisfamiliat, the teſtament dividis in thré partis, and the thrid of the fré geir payis quot.

Gif all the bairnis be forisfamiliat, the teſtament then dividis in twa partis, and the half of the fré geir payis quot.

Gif

Gif thair be na bairnis, the teſtament divides likewayis in twa, and the half of the fré geir payis quot.

Gif the perſoun deceiſt be ſingil, and has na bairnis unforisfamiliat, in that cais the haill fré geir payis quot, but ony diviſioun.

Gif it fall out that ony challenge the geir of the defunct, be vertew of ane aſſignatioun of the deid befoir his deceis, he aucht nottheles to confirm the teſtament of the defunct's geir, notwithſtanding his aſſignatioun, quhilkis, *quoad confirmationem teſtamenti*, is eſtimat to be ſimulat, and let him, as aſſigney, mak up his proteſtatioun, that the confirmatioun ſall not prejudge his aſſignatioun, *prout de jure.*

Ze ar to advert that the prices of the gudis gevin up in teſtament be valued conform to the commoun rate as thay ar ſauld in the cuntrey, nather tó heich nor tó low, in prejudice of the quottis and bairnis of the defunct.

Let na teſtament be confirmit without the aith of the executour, and the relict, ather man or wife, quha ſurvives the uther: And gif ony thing that ſall be tryit to be omittit, be thame, of the quhilk thay had na probabill ignorance, the ſamin pertenis to the Archbiſhop, or Biſhop, or to quhom thay ſall diſpone the ſamin.

Ze ſall not give licence to perſew for the defunct's gudis and geir, unto the time the teſtament be confirmit: Bot gif ony ſic cais fall out, quhairin the perſoun is miſerabill, or the debtis deſperate, remit him to zour Archbiſhop, or Biſhop.

That the Archbiſhop, or Biſhop, be confirmit executour to all ſic perſounis, (datives alwayis beand gevin thairto dewlie befoir) not confirmand, that the Procuratour-fiſcal perſew in the Biſhop's name for the defunct's gudis, to quhom he ſall be confirmit executour.

And to the effect that the debtis may be the better knawin, ze ſall call within zour juriſdictioun the intromettouris with the defunct's gudis and geir, (datives beand gevin as ſaid is) to give up inventar thairof: And in cais the intromettouris will not compeir, to the effect foirſaid, then ze ſall cauſe ſummond four or five of the defunct's narreſt nichtbouris, and utheris quha beſt knawis the ſamin, quha being ſworn ſall give up inventar of the deid's gudis, and declair the quantitie thairof, and under quhat diviſioun the ſamin cumis; and the expenſis to be maid thairupon ſall be modifyit zeirlie at the making of the comptis.

That everie ane of zou have ane Procuratour-fiſcal, quha ſall be ane honeſt, diſcreit and reſponſal man, for perſewing of all commoun actiounis, and quha ſall be decernit executour dative to all the defunctis within zour juriſdictioun, quhair he ſervis; quhen the narreſt of kin of the deid, nor na uther nominat executour, confirm not his teſtament in dew time: And ilk Procuratour-fiſcal ſall find cautioun that the gudis quhilk he ſall happin to intromet with, ſall be furthcumand as effeiris, and ſall mak compt zeirlie and payment of the foirſaidis gudis that ſall happin to be intromettit with be him, to the Archbiſhop, or Biſhop, and ſall have thré ſhillings for ilk pund that he bringis in and makis payment.

That all perſounis namit or to be namit executouris to ony defunct, ſall confirm thair teſtamentis within thré monethis efter the deceis of the defunct, at the fartheſt.

Gif ony perſoun ſall be decernit executour to ane defunct, quha com-

compeiris not perſonallie be reſſoun of ſeiknes or age, and craves ane Commiſſioun for taking of the executour's aith, ze ſall not grant ony commiſſioun to that effect, without the Miniſter's teſtificat of the partie's inhabilitie and knawledge, and conſent of the Archbiſhop, or Biſhop.

Quhen ane edict is execute to ane day, and the partie compeiris, and deſyris to be decernit executour, and craves ane day to give inventar and confirm, ze ſall continue the decerning of the partie in executour to the day that he ſould confirm, to the end all may be done *ſimul et ſemel.*

Ze ſall not ſuffer ony teſtamentis to have faith, or ony thing contenit in thame, without Confirmatioun.

Ze ſall not ſuffer ony eik of teſtamentis to be maid bezond fourtie pundis, and that bot anis, with knawledge of the Archbiſhop, or Biſhop.

That the inventaris be gevin up as thay wer the time of the defunct's deceis; and twelve pennies of everie pund of the deid's part ſall be the quot of all teſtamentis, baith greit and ſmall, quhilkis ſall be confirmit, als weill of teſtamentis datives as utherwayis. And the mitigatioun or compoſitioun of the ſamin quot ſall appertene to the Archbiſhop, or Biſhop, to quhom it belongis allanerlie, gif neid beis.

INJUNCTIOUNIS to the Clerkis.

Ze ſall have twa regiſter buikis, ane for the actis and ſentences, and ane uther for teſtamentis; quhilk buik of teſtamentis ſall be markit be the hand of the Archbiſhop or Biſhop's Clerk; and quhen the ſamin are fillit, to reſſave ane new buik, beſides zour buik of regiſtratiounis.

All contractis, obligatiounis, actis, or uther writtis, ſubſcrivit be parties, or Notaris beiring regiſtratioun in zour buikis, that are without the ſowme of ten pundis, ſall not be regiſtrat bot in preſence of the Commiſſar.

That all extractis of proceſs be ſubſcrivit be the Commiſſar, and that ze give furth nane utherwayis.

Ze ſall attend zour offices, and ſerve the lieges thankfullie, upon the prices following, keiping the particular compt of all the teſtamentis exceiding ſax ſcoir pundis of fré gudis and geir, to be anſwerabill to Mr. *Edward Merſhall* for ilk peace thairof, during his lifetime.

INJUNCTIOUNIS ſet down be the Archbiſhoppis and Biſhoppis of Scotland, *aſſemblit togidder upon the ſecund day of* March, MDCX. *at* Edinburgh, *anent the prices of all writtis, ſeillis, actis, extractis, preceptis, and fies quhatſumever, belonging to thair Commiſſaris Clerkis, Procuratour-fiſcalis, and uther memberis of court, excepting the four Commiſſaris of* Edinburgh, *quha ar ordanit to continue all the prices belonging to thair offices in the ſamin eſtate as thay have bene, heirtofoir, in reſpect thay reſſave fies for thair ſervice.*

SUMMONDIS *ad inſtantiam,* viij. *d.*
Ad probandum aut pronunciandum xvi. *d.*

Ad

Ad jurandum, ij. *s.*
*Ad ** candum*, ij. *s.*
De calumnia, xvj. *d.*
To inſiſt *defenſivè*, xvi. *d.*
In buiking and calling of actis, viij. *d.*
Libellit ſummoundis contening ane throuch, vj. *s.* viij. *d.*
Libellit ſummoundis contening twa throuch, xiij. *s.* iiij. *d.*
The ſeill of ane throuch, vj. *s.* viij. *d.*
The ſeill of twa throuch, xiij. *s.* iiij. *d.*
Ane edict of compt, vj. *s.* viij. *d.*
The ſeill thairof, vj. *s.* viij. *d.*
Inhibitiounis of ane vicarage of ane ſmall parſonage, for ſeilling thairof, x. *s.*
Inhibitiounis of ane greit perſonage, or perſonage with the vicarage, xiij. *s.* iiij. *d.*
Inhibitioun for diſcharging of inferiour Judges to proceid in matteris eccleſiaſtical, and writing, xx. *s.*
Preceptis upon matteris within xx. *lib.* upon decretis, the writing and ſeill, x. *s.*
Upon matteris of xl. *lib.* and abone xx. *lib.* upon decretis, ſeill and writing, xx. *s.*
Preceptis upon matteris abone lx. *lib.* for everie throuch, xiij. *s.* iiij. *d.*
Sentence ſilver of xx. *lib.* and within, vj. *s.* viij. *d.*
To the Officiar, xvi. *d.*
Price of extract of decretis, within ane throuch, x. *s.*
Without ane throuch, xxi. *s.*
Decreit of transferring, of ane throuch, xiij. *s.* iiij. *d.*
For ilk throuch mair, vj. *s.* viij. *d.*
For forming of ſmall teſtamentis, to the Procuratour-fiſcal, xiij. *s.* iiij. *d.*
For teſtamentis exceiding lx. *lib.* of fré geir, xxvj. *s.* viij. *d.*
Of ſax ſcore *lib.* fré geir, and exceiding, xlv. *s.*
And gif thay exceid twa throuch, ilk throuch mair, vj. *s.* viij. *d.*
Except it be greit Baronis, quha ſall pay for ilk throuch, xxx. *s.*
Item, The Officiar fee, for ilk teſtament, vj. *s.* viij. *d.*
And of greit teſtamentis, x. *s.*
To remember that the ſaid ſowme of xlv. *s.* appointit for forming of teſtamentis of ſax ſcore *lib.* and exceiding, ſall pay to the Procuratour-fiſcal of *Edinburgh*, during his lifetime, xv. *s.*
The regiſtratioun of ſmall teſtamentis within xl. *lib.* xiij. *s.* iiij. *d.*
Item, Teſtamentis betwixt thré ſcore and ſax ſcore *lib.* xxvj. *s.* viij. *d.*
And exceiding ſax ſcore *lib.* xlv. *s.*
Quhairof to be deducit to Mr. *Edward Marſhall*, during his lifetime, xv. *s.*
The ſeill of teſtamentis, quhair the deid's part is xl. *lib.* and within, xiij. *s.* iiij. *d.*
Abone xl. *lib.* and within thré ſcore, xx. *s.*
And quhair thay exceid ſax ſcore *lib.* iiij. *lib.*
And quhair it exceidis twa hundreth *lib.* vj. *lib.*
And quhair it exceidis viij. ſcore *lib.* and within CC. *lib.* vi. *lib.*
Item, The Procuratour-fiſcal and Clerkis of all commiſſariatis within this realme, except *Aberdeen*, to be ordanit to relcive the

Archbiſhopis and Biſhopis of the haill dewties belanging to the Clerk and Procuratour-fiſcal of *Edinburgh*; and richt ſwa the Commiſſaris to releive thair ordinaris of ſa meikil as is gevin to the Commiſſaris of *Edinburgh*, for augmentation of thair fies for the want of greit teſtamentis.

Letter conſtituting the Commiſſaris of Edinburgh.

ANE letter maid, makand mentioun, that our ſoverane Lady has eſtabliſhit her treſt Counſellouris, and weilbelovit Clerkis, Mrs. *James Balfour* Perſoun of *Flisk*, *Edward Henryſon*, *Clement Littil*, Advocatis, and *Robert Maitland* hir Hienes's Commiſſaris of *Edinburgh*; and has gevin, grantit and diſponit to the ſaid Mr. *James Balfour*, the ſowme of four hundreth merkis, and to everie ane of the remanent Commiſſaris foirſaidis, the ſowme of thré hundreth merkis, to be payit to thame in thair fies zeirlie, in maner following, at twa termis in the zeir, *Whitſounday* and *Martinmas* in winter, be evin portiounis, the firſt term's payment beginnand at the feiſt of *Whitſunday* nixt to cum: For ſure payment quhairof, hir Hienes has aſſignit, and aſſignis to thame, the twa part of the haill profitis of the ſignet and ſeill of the ſaid office, and als the haill ſentences and decretis ſilver concerning the ſaid office, to be dividit amangis thame in maner foirſaid: And gif the ſamin will not extend to the ſowmis foirſaidis *reſpectivè*, aſſignis to thame ſa mekil mair of the reddieſt of the quotis of the teſtamentis confirmit and to be confirmit, to be payit and deliverit to thame be the Collectouris thairof, as will mak furth the ſaidis ſowmis zeirlie, to be payit to everie ane of thame, as ſaid is; and with command in the ſamin to the Collectour of the ſaidis quotis of teſtamentis now preſent, and that ſall happin to be preſent for the time, to mak thankful payment to the ſaidis Commiſſaris of ſa mekil of the firſt end of the quotis of the ſaidis teſtamentis, as will mak furth to everie ane of thame the ſaidis ſowmis *reſpectivè*, the twa part of the profitis of the ſignet and ſeill of the ſaid office, and haill ſentences and decretis ſilver being comptit and allowit thairintill, and compt and rekning maid thairof zeirlie. And the ſaid ſowme to be deliverit to thame be the ſaid Collectour, ſall be thankfullie allowit to him in hir Hienes's comptis zeirlie, be the Auditouris thairof, quhom our ſoverane Lady charges to deface him of the ſamin, the ſaid letter being anis ſchawin and producit upon compt as accordis, *&c.* *At* Edinburgh, 7. *Mart.* 1563.

Carta conſtitutionis Commiſſariorum Edinburgi.

MARIA Dei gratia, Regina Scotorum, omnibus probis hominibus ſuis, ad quos præſentes literæ pervenerint, ſalutem. Noveritis, quod uti palam conſtat ob ceſſationem ſeu abſentiam eccleſiaſticæ juriſdictionis Officialium & Commiſſariorum intra hoc noſtrum regnum, omnes actiones & cauſæ conſiſtoriales cognoſcendi & in conſiſtoriis decidendi antea in uſu fuerant, per longam juſtitiæ dilationem ſic dampnificatæ extiterunt, magna una pars noſtrorum

rum ſubditorum, quod ipſi qui dictas actiones occurrentes habent, mentiſque exiſtunt promptitudinem atque ad proſequendum haben' multimode per carentiam ordinis ejuſdem poſtpoſiti exiſtunt: Et nos ingens gravamen, aut populi noſtri læſionem per hujuſmodi recepimus, ac indies recipimus, volentes eos inde relevare; nec non per proviſionis viam in hujuſmodi locum, vulgo *Rowme*, bonum quendam ordinem ſtabilire, ſic quod juſtitiam illis exacte, rationabiliter, & cum omni diligentia in poſterum miniſtrari ſeu fieri poterit: Quocirca, cum aviſamento Dominorum noſtri ſecreti conſilii, fecimus, conſtituimus, & ordinavimus, ac facimus, conſtituimus, & ordinamus, per præſentes, dilectos noſtros, conſiliarium conſiſum, & clericos, Magiſtros Jacobum Balfour Rectorem de Flisk, Edwardum Henryſoun in juribus ſeu legibus Doctorem, Clementem Litill Advocatum, & Robertum Maitland, ac quemque eorum, conjunctim & diviſim in modo ſequenti, noſtros Commiſſarios Edinburgi in hac parte; dando, concedendo & committendo illis, illorumque cuique conjunctim & diviſim, noſtram plenam poteſtatem ac mandatum ſpeciale intra burgum noſtrum de Edinburgh, in quacunque conveniente parte ejuſdem, ſedendi, & ullo diei tempore, prout illis placuerit, coram eis omnes noſtros ligeos infra bondas vicecomitatuum noſtrorum de Edinburgh principali, & intra conſtabulariam de Haddinton, Peblis, Linlithgow, & vicecomitatus noſtri de Striveling, a Striveling orientaliter, in eiſdem villam & parochiam de Striveling comprehendendo, atque omnes actiones concernentes decimas, teſtata bona, injurias, curatorum donationem, acto noſtri parliamenti conformiter diſcutiendi, decernendi & decidendi: nec non omnes alias actiones & cauſas intentatas ſeu intentandas, coram illis per ullas perſonas intra bondas prædictas reſidentes, aut contra ipſas per quaſcunque alias, quæ in conſiſtorio perprius judicari & decidi ſolent; una cum omnibus cauſis & actionibus beneficialibus, matrimonialibus, divortii & baſtardiæ, intentatis ſive intentandis, per quaſcumque perſonam ſeu perſonas, infra ullas hujus noſtri regni partes vel loca commorantes, aut materias matrimoniales inter partes procul reſidentes, quæ ob paupertatem, longum placitum, ſeu juſtitiam proſequi minime valent, qualificatis perſonis in patria, vel locis proximioribus locis quibus ipſi commorantur ſive reſident committendi; pro quibus in cauſa illa reſpondere tenebuntur: Omnibus quoque appellationibus interpoſitis ſeu dependentibus ab ullo alio Commiſſario, ſeu Commiſſariis, quoquove alio judice eccleſiaſtico hoc noſtrum infra regnum retroactis temporibus; appellationes etiam ſive reductiones interponendas poſtea ab alio quocunque Commiſſario infra hoc noſtrum regnum: Cum poteſtate prænominatis Magiſtris Jacobo, Edwardo, Clementi, & Roberto, ac ipſorum ulli, conjunctim & diviſim, omnes alios judices incompetentes in illis cauſis, ſeu caſibus, infra hoc noſtrum regnum, inhibendi ad procedendum in cauſis dictorum Commiſſariorum noſtrorum juriſdictioni pertinentibus ſive ſpectantibus; cum certificatione iis, ſi in hoc ſuccubuerint, aut defecerint, ſive proceſſerint, quodcunque illis agere contigerit depoſt, in ſe nullum nulliuſque effectûs declarabitur, cum omnibus quæ deſuper ſequentur; ipſique pro eorum inobedientia punientur: Omnimodos contractus, obligationes, acta, aliave ſcripta per partes, vel notarios ad ipſorum mandata, ſubſcript' proportantes ſive gerentes, quod ipſæ partes eoſdem in dictorum Commiſſariorum libris regi-

regiſtrari contentæ ſunt, cum literis ad eorum noſtrum poſitionis ſeu namationis deſuper donandis, recipiendi, atque in eorum libris ſupradictis regiſtrari cauſandi: Præcepta pro teſtium ſummonitione ad comparendum fidele teſtimonium perhibere in omnibus cauſis, motis movendiſve coram illis, ſub ſimilibus pecuniariis pœnis, ac ſi prælibatis noſtris Commiſſariis, ſecundum qualitatem cauſæ expediens viſum fuerit, dirigendi; & ſi teſtes ſummoniti exiſtentes minime comparuerint, eorum Officiarios namare, & dictas pœnas inſtructionibus ſibi deſuper exhibitis applicandas fore cauſandi: Omnia deforciamenta, per quaſcunque perſonam, ſeu perſonas, ſuper eorum Officiariis præſcriptis commiſſa vocandi, diſcutiendi, ac coram illis decernendi, quorum pœnæ adeo graves erunt, ac ſi noſter Officiarius armorum in executione noſtrarum literarum deforciatus extitiſſet; ex eo quod eorum Officiarii executores noſtræ juſtitiæ, & reſpectu in hoc, noſtri Officiarii exiſtunt: Teſtamenta quarumcumque perſonæ vel perſonarum infra bondas ſuæ particularis juriſdictionis ſupradictas, cujuſvis valoris & quantitatis cujuſcunque ſint: Nec non omnia alia teſtamenta quarumcumque perſonarum infra ullam aliam partem hujus noſtri regni reſidentium aut commorantium, quorum pars defuncti ſummam quinquaginta librarum excedet, confirmandi; præfata teſtamenta in libris ipſorum Commiſſariorum regiſtrari cauſandi; dativas, ſi opus fuerit, in forma juris ſub cautione dandi ſive deliberandi: Qui quidem proceſſus, ac quæcumque dicti Commiſſarii, ullive ipſorum conjunctim aut diviſim, aut eorum Officiarii in actionibus & cauſis ſupraſcriptis illorum nominibus agere ſeu perficere contigerint, cum omnibus incidentibus, emergentibus, annexis, connexis, & dependentiis deſuper, adeo valide, legitime tantique grandis valoris, fortitudinis & effectus, veluti ullus proceſſus ſeu ſententiæ, quæ per quemcumque judicem aut judices conſiſtoriales deductæ, vel datæ intra hoc noſtrum regnum, quocumque elapſo tempore fuerunt: Acta, decreta, & ſententias pronunciandi: Procuratores coram illis, pro proſecutione defenſioneque dictarum actionum admittendi: Ordinarios officiarios pro executione ſuarum directionum faciendi, creandi & ordinandi; pro quibus reſpondere tenebuntur; & generaliter omnia alia & ſingula faciendi, exercendi & utendi, quæ in ſimilibus officiis de jure ſeu conſuetudine ſunt, aut ullo elapſo tempore dignoſcuntur pertinere: Ratum et gratum habentes & habituræ totum & quicquid prænominati noſtri Commiſſarii, aut eorum quicumque, ſuive officiarii & miniſtri in præmiſſis rite duxerit ſeu duxerint faciendum. Ac volumus quod præſens noſtra commiſſio juriſdictioni collegii noſtri juſtitiæ, Vicecomitum, Seneſcallorum, Balivorum regalium regalitatum Comitum, Dominorum, Baronum, & Liberetenentium, Præpoſitorum ac Balivorum, ſeu ullius alius temporalis judicis cujuſcumque infra hoc noſtrum regnum, in cauſis eorum juriſdictioni pertinentibus, nequaquam præjudicabit, neque derogationem faciet. Quare, univerſis & ſingulis quorum intereſt, vel intereſſe poterit, ſtricte præcipimus & mandamus, quatenus ſupra ſpecificatis noſtris Commiſſariis, aut eorum cuilibet conjunctim & diviſim, ſuiſque officiariis & miniſtris, in omnibus & ſingulis præmiſſa concernentibus prompte reſpondeant, pareant & intendant, ſub omni pœna quæ competere poterit in hac parte: Præſentibus, noſtris bona voluntate & beneplacito, ac quouſque ulterior ordo in præmiſſis capiatur, duraturis. Datum ſub teſtimonio

monio noſtri magni ſigilli, apud Edinburgh octavo die menſis Februarii, anno Domini milleſimo quingenteſimo ſexageſimo tertio, & regni noſtri viceſimo ſecundo.

Per ſignaturam manu S. D. N. R. ſubſcript.

COMMISSIOUN in parliament to certane Noblemen to treat with the Lordis of ſeſſioun upon the confirmatioun of teſtamentis, and placing of Commiſſaris, 25 Julij, MDLXXVIII.

THE quhilk day our ſoverane Lord, with advice and conſent of the thré eſtates of parliament, gevis, grantis, and committis full powar and commiſſioun to *Patrick* Archbiſhop of *St. Andrews*, *James* Archbiſhop of *Glaſgow*, *David* Biſhop of *Aberdeen*, *George* Biſhop of *Murray*, *Robert* Erle of *Buchan*, *Henry Nisbet* Commiſſioner of *Edinburgh*, Mr. *James Halyburton* Provoſt of *Dundee*, and *Gilbert Meinzies* Provoſt of *Aberdeen*, to paſs to the Senators of our ſovereign Lord's college of juſtice and ſeſſioun, within the burgh of *Edinburgh*, the twenty-fourth day of *October* nixt to cum, to confer, treat and intercommune with thame upon the confirmatioun of all teſtamentis within this realme; and anent the eſtabliſhing of Commiſſaris, how many there ſall be; quhat juriſdictioun thay ſall have; in quhat place thay ſall ſit; and upon all uther eccleſiaſtical cauſes quhairunto the ſaidis Commiſſaris ar Judges; and to report the ſaid conference and communing to our ſovereign Lord, and Lordis of ſecret counſal, the twenty-fourth day of *December* nixt to cum, to the effect that thay may conclude and decern thairintill, quhill ane law be eſtabliſhit be parliament to all our ſoverane Lord's lieges, to be obſervit and keipt be thame in all time cuming.

Ratificatio commiſſionis Dominis concilij & ſeſſionis conceſſæ de regulandis commiſſariis: In parliamento, pen. die Novemb. MDLXXXI.

OUR ſoverane Lord, with aviſe of the thré eſtatis of this preſent parliament, has ratifyit, approvit and confirmit, as thay be the tenor heirof ratifyis, affirmis and approvis, the commiſſioun grantit and gevin to the Chancellour, Preſident and Lordis of ſeſſioun, anent the juriſdictioun of the Commiſſaris of this realme, in all pointis, clauſes, and articles contenit thairin, efter the form and tenour of the ſamin; of the quhilk the tenour followis: *Jacobus, Dei gratia, Rex Scotorum, omnibus probis hominibus ſuis, ad quos præſentes literæ pervenerint, ſalutem. Sciatis, cum animadverteret chariſſima noſtra mater, poſt inſtauratam religionem, et officialitates atque eccleſiaſticas juriſdictiones in hoc noſtro regno abrogatas, ſubditis ſuis nullum patere aditum ad judices ordinarios, qui teſtamenta confirmarent, et de ſpiritualibus cauſis cognoſcerent, ex ſua dominorumque ſecreti conſilii ſententia, in officialitatum abrogatarum vicem, juriſdictiones commiſſariatuum, in hoc regno ſuffecit & ſurrogavit, quæ res inſigni fuit ſubditis commodo et emolumento. Quoniam vero in prima dictorum commiſſariatuum erectione, homines quidam ad hæc munera inepti et inutiles, celſitudinem ejus fraudibus et aſtu circumvenientes, commiſſariatuum, eorumque ſcribarum officia impetrarunt, cum poteſtate majora teſta-*

teſtamenta confirmandi, quæ ſolis commiſſariis Edinburgi erant reſervata; cum venia etiam et immunitate a reddendis rationibus quotarum partium ex teſtamentis, quæ in ſupplementum ſtipendiorum deſtinatæ fuerunt Dominis concilij: unde ordo, per ejus celſitudinem præclare inſtitutus, conturbatus eſt, juſtitia depravata, et fruſtrati ſtipendiis ſuis Domini ſeſſionis. Eam ob rem, menſe Decembri, anno Domini milleſimo, quingenteſimo, ſexageſimo ſexto, chariſſimi noſtri pater et mater, conſultis ſecreti concilii ſui Dominis, ad evitanda hæc et alia id genus incommoda, commiſſionem novam conceſſerant fidis ſuis conſiliariis, cancellario, præſidi, ceteriſque collegii juſtitiæ ſenatoribus, quotieſcunque quivis commiſſarius, ejuſve ſcriba, vel alius curiæ miniſter, diem obiret, aliave ratione ipſorum officia vacare contingeret, in eorum vicem offerendi et præſentandi viros iis muneribus aptos et idoneos, ut ipſi parentes noſtri, eorumque ſucceſſores, eadem diſponerent, et commiſſiones in eam rem concederent viris ita nominatis et præſentatis, ea lege, ut commiſſiones aut donationes dictorum officiorum conceſſæ ac impetratæ citra ſeſſionis noſtræ, ſeu eorum ſucceſſorum rogatum, et præſentationem, irritæ et invalidæ, nulliuſque ponderis eſſent ac momenti; facta etiam poteſtate dictis cancellario, præſidi, ceteriſque ſenatoribus, abolendi, abrogandi, et irrita faciendi quævis officia, privilegia, et immunitates quæ primæ dictorum commiſſariatuum inſtitutioni, quoviſmodo obſtent atque adverſentur; præterea legibus ita coercendi, et in ordinem redigendi commiſſarios omnes, et ſubditos noſtros eorum juriſdictioni obtemperantes, ut dictis cancellario, præſidi, eorumque collegis commodum videbitur, ad ſubditorum utilitatem, quietem, et tranquillitatem, prout ex dicta commiſſione de data quam ante ſignificavimus, aſſatim apparet: unde conſecutum eſt inſigne ſubditorum emolumentum, juſtitiæ propagatio et incrementum, Dominorum denique concilii ſingulare compendium et proventus, auctis ita ſtipendiis eorum: Nonnullis tamen adhuc laborat hæc inſtitutio vitiis et incommodis, quibus operæ pretium eſt mederi atque ſubvenire; nimirum quod initio dictæ erectionis, et poſtero etiam tempore, nonnulli impetrarunt ſibi officia commiſſariatuum, ſcribarum, aliorumve ejus ordinis miniſteriorum, univerſo vitæ ſuæ ſpatio duratura; alii vero ea officia non ſibi ſolis, ſed etiam poſt ipſorum obitum, liberis ſuis et amicis conſequuti ſunt; ſic ea ſe habitutos arbitrati perpetua et hæreditaria, nec inde jure depelli aut amoveri poſſe; ex quo malo, graviſſima detrimenta, et inſolentes harum functionum depravationes profectæ ſunt: Aliud eſt hujus rei vitium et incommodum, quod commiſſariorum nonnulli amplas uſque adeo commiſſiones obtinuerunt, juriſdictionis ſuæ finibus longe propagatis, ac diverſos vicecomitatus complectentibus, ut nec ipſi muneribus ſuis ſufficere ac ſupereſſe poſſint; neque ſubditi noſtri, abſque graviſſimis laboribus, ſumptibus, et trajiciendorum fretorum, fluminum, et æſtuariorum periculis, jus ſuum proſequi in leviculis præſertim cauſis, judice tam longis itineribus diſtante ab ipſorum domiciliis: quanquam ut quævis provincia ſeu vicecomitatus ſuum habeat vicecomitem, qui civiles controverſias decidat; ita par eſt, et e re populi, ut ſuum habeat commiſſarium, et judicem eccleſiaſticum in urbe ſua primaria et celeberrima (modo ad eam rem idonea ſit) qui de ſpiritualibus cauſis cognoſcat. Ea propter nos, ex ſententia dominorum ſecreti noſtri conſilii, non modo probamus, ratam habemus, et confirmamus ſuperiorem commiſſionem a chariſſimis noſtris parentibus conceſſam ſenatoribus collegii juſtitiæ, pariterque omnia quæ inde promanarunt, et conſequuta ſunt, aut poſtmodum

dum conſequi poſſunt; ſed hoc amplius de novo concedimus, demittimus, et indulgemus prædictis cancellario, præſidi, eorumque collegis, id eſt, toti qui nunc eſt ſenatui, quive in poſterum eſt futurus, plenam et integram noſtram poteſtatem, authoritatem, et mandatum ſpeciale, univerſos regni noſtri commiſſarios, eorumque ſcribas, et alios juriſdicendi miniſtros, ad ſe accerſendi et convocandi, ut proferant, et exhibeant officiorum ſuorum proviſiones et donationes, a ſenatu viſendas et explorandas; quæ ſi aut illis ad omne vitæ curſum fuerint conceſſæ, aut etiam eorum liberis, aliiſque amicis, in eorum vicem ſucceſſuris, protenus ex ſententia dicti ſenatus aboleantur, abrogentur, et irritæ habeantur: Quo fiat, ut qui poſtmodum id generis officia impetrarint, et adepti fuerint, eiſdem fungantur, duntaxat quamdiu ſenatus voluerit, eoſque cenſuerit maneribus ſuis idoneos, et legibus atque injunctionibus obſequentes, neque alia prorſus ratione. Simili modo dictis ſenatoribus volumus, permittimus, et præcipimus, ut, commiſſariatuum hujus regni juriſdictionibus diligenti examine obſervatis et exploratis, earum limites atque oras diminuant, adaugeant, immutent, atque diſtinguant, ut e re populi videbitur; præſertim ut commiſſariatus novos erigant atque inſtituant in urbibus cujuſque provinciæ, vicecomitatus, vel dioceſeos primariis et celeberrimis, ſaltem quas ad eam rem aptas eſſe atque idoneas animadverterent; juriſdictionis autem cujuſque fines diſcriminent et dimetiantur finibus ipſius vicecomitatus, aliiſve ad ſuum arbitrium tractibus et ſpatiis, prout incolarum et locorum natura exigit atque invitat. Qua quidem in re hoc imprimis jubemus ac præcipimus, ut nullam habeant rationem commiſſionum a nobis, aut prædeceſſoribus noſtris, antehac alicui conceſſarum, neque etiam veteres ritus et conſuetudines, aut diuturna locorum urbiumque privilegia morentur; atque obſervent: Quæ omnia nos tenore præſentium, tollimus, abrogamus, extinguimus, eademque invertendi, mutandi, atque irrita faciendi meram facimus cancellario, præſidi, eorum collegis, poteſtatem, præcipientes ac jubentes, ut in curam harum omnium quas ante diximus rerum gnaviter incumbant; præſertim vero, ut commiſſarii omnes, et eorum ſcribæ, miniſtrique ceteri, in annuis ipſorum Edinburgi comitiis et conventibus ad rationes reddendas inſtitutis, probentur et examinentur de munerum ſuorum adminiſtratione, et factæ adverſum eos querelæ ac delationes auſcultentur, et cognoſcantur; delicta denique et commiſſa eorum caſtigentur et plectantur, vel muneribus ſuis eos abdicando, aliamve mulctam irrogando, ad arbitrium ſenatus: Cui etiam præcipimus, ut omnes commiſſiones et donationes munerum in commiſſariatibus, ſi quæ conceſſæ ſunt ad univerſum vitæ ſpatium, aut etiam in gratiam poſterorum, aut ſubſtitutorum, aut alia quavis ratione, quam rogatu et præſentatione dominorum concilii, abroget, evertat, et invalidas irritaſque denuntiet in perpetuum; ac proinde commiſſarii omnes eorumque ſcribæ ac miniſtri præſentationes impetrent, et commiſſiones novas, duraturas quamdiu duntaxat ſenatus voluerit, et eorum adminiſtrationem probaverit; denique imminuat, extendat, immutet, ac diſtinguat ſenatus juriſdictionum fines, adeoque ſedes ipſas commiſſariatuum, ut ex ſententia dominorum concilii conducere atque expedire videbitur, ad populi utilitatem, et juſtitiæ in hoc hoc regno conſervationem, perinde ut nobis ad reddendam harum rerum rationem parati eſſe velint. Nos vero facturos præcipimus et pollicemur, ut hæc noſtra commiſſio collegio juſtitiæ conceſſa, probetur, confirmetur, rataque habeatur, primi noſtri dehinc parliamenti auctoritate. Datum ſub teſtimonio

ſtimonio noſtri magni ſigilli, apud Dalkeith, duodecimo die menſis Julii, anno domini milleſimo quingenteſimo octuageſimo primo, et regni noſtri decimo quarto.

Ratificatioun of the juriſdictioun and privileges of the Commiſſaris of Edinburgh, *in parliament*, v. *Junij*, MDXCII.

OUR ſoverane Lord, and eſtatis of this preſent parliament, conſidering that the juriſdictioun eccleſiaſtical, belonging to the officials of auld, is and was devolvit in the Commiſſaris choſin and nominate be our ſovereign Lord's derreſt mother to that effect; and that the matrimonial cauſis and baſtardies, with the reſt of the weightieſt and greiteſt matteris of the ſaid juriſdictioun, was committit to the Commiſſaris of *Edinburgh*, according to the ſpecial inſtitutioun and erectioun of the ſaid commiſſariat, maid be our ſaid ſoverane Lord's mother, maid in the month of the zeir of God MDLX ** zeiris; be virtue quhairof, the ſaid Commiſſaris of *Edinburgh*, and thair predeceſſouris, with the reſt of the inferiour Commiſſaris within this realme, has bene in uſe and poſſeſſioun of thair ſaid juriſdictioun in ſpiritual cauſis, and has faithfully and diligentlie diſchargit thair dewties in the adminiſtratioun of juſtice to the lieges: Thairfoir his Hienes, and eſtaitis of this preſent parliament, ratifyis and appreivis the ſaid inſtitutioun of the ſaid Commiſſaris erectioun, and inſtitutioun thairof, with the injunctiounis gevin to thame, thair giftis and commiſſiounis to the ſaid offices, eſter the form and tenour thairof, with all uther liberties, privileges and immunities belonging to thair ſaid juriſdictioun; decerning and declaring the ſaid juriſdictiounis to be als ample, of the ſamin force and authority with the juriſdictioun of the ſaid officialis to quhom thay ſucceeded; and to have bene, fra the beginning thairof, and to be in all time cuming, ane lauchful and ordinary judgment-ſeat, and to bruik all the priviledges thairof.

Ratificatioun to the Lordis of counſal and ſeſſioun, and to the Commiſſaris of Edinburgh, *of thair juriſdictioun and priviledges*, &c. *in parliament.* 1 *Julij*, MDCVI.

OUR ſoverane Lord, with advice of his eſtaitis in parliament, has ratifyit, approvin and confirmit, and be thir preſentis ratifyis, approvis and confirmis, all and quhatſumever priviledges, liberties, and immunities, grantit of befoir be his Majeſty, and his maiſt noble progenitouris, to the Chancellour and Lordis of his counſal, ſeſſioun, and colledge of juſtice, baith ſpiritual and temporal, and to the haill remanent memberis of the ſaid colledge of juſtice, for maintenance of thame in thair perſounis, honouris, dignities and richtis, and for bruiking of thair landis, rentis, benefices, penſiounis, thriddis, and contributiounis of all prelacies, and thair uther richtis, in the form as is contenit in the firſt erectioun of the ſaid colledge, and as thay and thair predeceſſouris has bruikit and poſſeſt ſenſyne, and preſently bruikis and poſſeſſes, conform to the diſpoſitiounis and ratificatiounis thairof in parliament, or ony uther actis, lawis,

lawis, ſtatutis and diſpoſitiounis maid be his Majeſty, or his predeceſſouris, in favouris of the ſaidis Lordis of counſal and ſeſſioun, colledge of juſtice, and particular memberis and perſounis thairof, in all punctis; and ſpeciallie our ſoverane Lord, and his ſaid eſtatis, ratifyis and approvis the gift and richt maid to the ſaid Lordis of counſal and ſeſſioun, of the ſuperplus of the quotis of teſtamentis, by the ordinar fies and allowances grantit to the ſaid Lordis be his Majeſty, for thair better reſidence and adminiſtratioun of juſtice; and of thair richt of preſentatioun to our ſoverane Lord, of perſounis to the offices of quhatſumever Commiſſar, or thair memberis, vacant, with all uther richtis of befoir grantit to thame thairanent: And ſiclike, our ſoverane Lord, with advice of his eſtatis, be thir preſentis, ratifies, appreivis and confirmis the commiſſioun and injunctiounis, togidder with the haill juridictioun, and all and quhatſumever priviledges, liberties and immunities, and utheris richtis, grantit be his Majeſty, and his predeceſſouris, to the Commiſſaris of *Edinburgh*, and thair memberis, in ſic form as the ſamin is contenit in the commiſſioun and injunctiounis gevin to thame in the firſt erectioun, as the ſaid commiſſioun and injunctiounis in thameſelfis at lenth beiris, and as the ſaidis Commiſſaris, and thair memberis, preſentlie bruikis and poſſeſſes the ſamin, conform to thair commiſſiounis in all punctis, notwithſtanding of quhatſumever actis, ſtatutis, and conſtitutiounis, maid, or to be maid in this preſent parliament, or ony uther parliament preceeding, or to cum, quhilkis may appeir to derogat fra the ſamin.

Followis the auld lawis maid be certane Kingis of Scotland, as thay ar contenit in the Scottiſh Chronicles.

ITEM, It is ordanit, that the ſlayer of the wolf ſall have ane ox for his reward. King *Dornadilla. Chron. lib.* 2. *c.* 4.

Item, The awner of the dog that firſt bites the deir, to have the hide thairof; he quhais dog bites nixt, ſall have the heid and the hornis; the body curit to be at the pleaſour of the maſter of the huntis; the reſidue to be for the hundis.

Gif ony contentioun ariſe betwix the hunteris, thay ſall cheiſe, with commoun conſent, ane Judge to aggré thame.

THE heid of everie ox that was ſlane was gevin to the Smith of that ſhire; the craig to the foreſtar of the wod; the toung to the man of law; half ane coſt to the ſercheris of theives; als mekil to the wricht; twa ribbis of the coſt to the medicinar; als mekil to the chirurgian. And beſides this wer gevin to thame certane meaſouris of aitis and beir, becauſe na change of money was in theſe dayis. King *Reuthar. Chron. lib.* 2. *c.* 10.

Item, Becauſe greit damnage fallis oftentimes to the pepill be ignorance of evil medicinaris, it is inhibite and forbiddin, under the pane of deid, that ony man exerciſe the art of medicine, without he

he be firſt examinat, and fund richt expert throw lang experience thairof.

King *Fynnanus. Chron. lib.* 2. *c.* 13.

IT is ſtatute, that the King ſall do nathing in the publick adminiſtratioun of his realme without adviſe of his Nobles.

Item, It is not leaſum to the King to denunce weir, or treat peace, without conſent and adviſe of the Capitanis and the tribes.

King *Evenus. Chron. lib.* 3. *c.* 5.

IT is leaſum to all men to have als mony wives as thay pleiſe, effeirand to thair gudis and ſubſtance.

Item, The wives of the commounis ſall be fré to Nobles. The quhilk law was thairefter abrogat be *Corbredus Galdus, lib.* 2. 4 *chron. c.* 8.

Item, The Lord of the ground ſall have the maidenhood of all maidenis and virgins dwelland on the ground.

King *Mogallus. Chron. lib.* 5. *c.* 5.

THE gudis, landis and poſſeſſiounis, of all condemnit perſounis, befoir the time of *Mogallus*, came and pertenit but ony pley to the fré diſpoſitioun of thair wives and bairnis; bot this King *Mogallus* was the firſt King that ſtatute and ordanit, That the gudis of baniſht and condemnit perſounis ſould be confiſcat to the King's uſe, but ony reſpect to the wives and children.

Argadus, Governour. *Chron. lib.* 5. *c.* 7.

IT is ſtatute, that extreme diligence be maid to ſearch theives, reiveris and oppreſſouris, and ſpeciallie thame that makis heirſchippis in *Argile*, *Iles*, and uther partis adjacent; and that thay quha ſall be apprehendit be hangit, but ony mercie, on jebattis.

Item, All perſounis havand ony office or authoritie of the King, ſall abſtene fra ſic thingis as may mak thame inebriat or drunken, to the effect thay may have ſum preheminence, wiſdom and authoritie abone the commounis.

Item, That all ſcudlaris, taverneris, drunkardis, and utheris ſiclike perſounis, deviſit mair for vile luſt than for the ſuſtenance of men, be exylit and baniſht within ane certane day; the quhilk day being bypaſt, that thair gudis be confiſcat, quhairever thay ſall be apprehendit.

King *Ethodius* I. *Chron. lib.* 5. *c.* 11.

IT is ſtatute and ordanit, that na hairis be ſlane quhair thay ar lyand, with clubbis, arrowis, dartis, or ony ſiclike inſtrumentis, nor zit takin be nettis or girnis; becauſe hairis wer oftentimes murderit be ſic maner, without ony game.

Item, Als it is ſtatute, that the hairis that had forerun the hundis be lang renk ſould be na farder perſewit.

Item, That na man ſlay ane baggit hind, nor zit thair calfis.

Item, Als, it is defendit to ſlay ane haire be ony uther ingyne than chace of hundis; and na kind of hunting to be uſit during the ſeaſon of winter or weir; for in that ſeaſon the zeird is ſa overcoverit with ſnawis, that the deir ar conſtranit to deſcend fra the mountainis to the planis, to ſeik thair food, and oftentimes murderit without ony game.

King *Ethodius* II. *Chron. lib.* 5. *c.* 12.

IT is defendit and forbiddin, that ony man ſpeik in judgment for ony criminal perſoun: And gif it happinis ony to do in the con-

contrare, he ſall be repute as participant of the crime with him for quhom he ſpeikis.

ITEM, For puniſhment of extortiounis and oppreſſiounis done to the Commounis be the Nobles, in ſic ſort, that thay dar not complene, nor zit follow thair actioun befoir the King's juſtice; it is ſtatute and ordanit, that certane exploratouris paſs throw all the boundis of the realme, and ſearche quhair ony perſounis ar ſuſpect to have done ony ſic oppreſſiounis, that baith thair namis, and thair crimes be writtin in the King's rollis: And gif ony of thame being accuſit be his Hienes's Advocat, happinis to be fund criminal, he ſall be puniſht to the deith thairfoir. King *Conranus. Chron. lib.* 9. *c.* 1.

It is ſtatute and ordanit, gif ony perſoun happinis to be condemnit criminallie, wrangouſlie, that it ſall be leaſum to him to appeal to his uther Judges. King *Eugenius* III. *Chron. lib.* 9. *c.* 11.

Item, All indigent perſounis, not havand gudis of thair awin to follow thair actioun, ſall be ſupportit and helpit to that effect be the commoun gude.

Item, That na man call or perſew ane perſoun, being pupil, in judgment, untill he be of perfeit and lauchful age.

Item, That na widow be drawin to judgment ane mile fra hir dwelling-houſe.

It is ſtatute and ordanit, that he quha dingis ane Preiſt ſall want the richt hand; and he that ſlayis ane Preiſt ſall be brint, and his gudis confiſcat to the King's uſe. King *Convallus. Chron. lib.* 9. *c.* 14.

Item, The teindis of all fruitis that growis on the ground ſall be gevin to the Kirk.

Item, He that is curſit be the authoritie of the Kirk, ſall be excludit and baniſht fra all gude companie and ſocietie of men; and na perſoun ſall do him reverence; and he ſall not injoy the privilege of the law; and na faith ſall be gevin to his depoſitioun or teſtimonie.

Item, All Parſounis and Vicaris ſall have certane croftis and landis lyand about the Kirkis, to cauſe thame be mair fervent in thair reſidence and devotioun.

It is ſtatute and ordanit, that all idill pepill, ſic as juglaris, minſtrellis, bardis, and ſcaffarris, ather paſs out of the realme, or ellis find ſum craft to win thair living. King *Eugenius* IV. *Chron. lib.* 9. *c.* 18.

It is ſtatute, that the teindis of all maner of fruitis growand on the ground ſall be gevin to ſuſtene kirkmen. *Hungus* King of *Pictis. Chron. lib.* 10. *c.* 5.

Item, That na kirkmen ſall be ſummoundit in judgment befoir ony prophane or temporal Judge, nor zit ſall be puniſht to the deith, notwithſtanding ony crime committit be him; the quhilk law *Feredach* King of *Pictis* did efterwart abrogat.

1. In ilk ſhire of this realme ſall be ane man of law, to decide doubtſum materis, quhen thay occur; and thair ſonis ſall learn the lawis in thair tender age. King *Kennethus* II. *Chron. lib.* 10. *c.* 12.

2. The

2. The lawis and conſtitutiounis of this realme ſall be keipt onlie be thame: And gif ony of thame be convict of falſet, or ony uther crime of leſe-majeſtie, thay ſall be hangit on a jebbat.

3. He that is convict of thift ſall be hangit; and he that committis ſlauchter ſall be heidit.

4. Ane woman convict of ane capital crime, ſall be drownit, or brint quick.

5. He that blaſphemes God or his Sanctis, or blaſphemes the King or his Capitanis, ſall want his toung.

6. He that makis ane leaſing, in damnage of his nichtbour, ſall tyne his ſword, and be exilit fra gude company.

7. All perſounis ſuſpectit of ony crime, ſall ſuffer the inqueſt of ſevin, nine, eleven, threttene, or fyftene wiſe men, and ſwa furth, in odd nombre.

8. All reivaris, oppreſſouris, and invaſouris of uther men's landis, ſall be heidit.

9. All vagabundis, ſulis, bardis, ſcudlaris, and ſiclike idill pepill, ſall be brint on the cheek, and ſcourgit with wandis, except thay find ſum craft to win thair living.

10. The wife ſall not be puniſht for the husband's iniquitie; bot the man ſall be puniſht for the crime of his wife, gif he knaw the crime: And gif ſcho be not his wife, bot his concubine, ſcho ſall be puniſht with the ſamin punitioun as the man deſervis for his crime.

11. He that raviſhis a virgin, bot gif ſcho defire him in mariage, ſall be heidit.

12. He that fuilzies ane uther man's bed ſall be put to deith, with the woman, unleſs ſcho be forcit.

13. He that forces ane woman ſall be heidit, and the woman ſall ſuffer na skaith, bot be declarit innocent.

14. Gif the ſone be injurious to the father, in word or deid, that member that offendis, quhidder it be fute, toung, or hand, ſall be cuttit fra him: And efter this punitioun he ſall be hangit on ane jebbat, and his bodie ſall remane abone the zeird unburyit.

15. He that is ane man-ſlayer, or born dum, or unthankful to his father, ſall ſucceid to na heritage.

16. Juglaris, witches, and makeris of privat pactiounis with devillis, ſall be brint to the deid.

17. Na ſeid ſall be ſawin quhill it be purifyit fra all noyſom grainis.

18. He that ſufferis his land to be fylit with guildis, or ſiclike improffitabill wedis, ſall pay, for the firſt fault, ane ox, to the commoun gude; the ſecund fault, ten oxen; and the thrid fault, he ſall be foirfaltit of his landis.

19. Gif thy companzeoun, or freind, be ſlane in the feild, he ſall be buryit, and thy enemie left but ſepulture.

20. Ane beiſt beand fund gangand wild, ſall be gevin agane to the awner, or to the ſercheris of theives, or ellis to the Preiſt of the parochin; quha that with-haldis it thré dayis, ſall be accuſit of thift.

21. He that findis his nichtbour's geir, ſall inquire, be opin proclamatioun the awner thairof; utherwayis he ſall be puniſht as ane theif.

22. He

22. He that ſtrikes his collitigant in judgment, ſall tyne his actioun: And gif he be actor, his partie ſall be aſſoilzeit fra his petitioun.

23. Quhen uncouth ky fecht amang thameſelfis, gif ane of thame happinis to be ſlane, and it is uncertane quhat kow maid the ſlauchter, the kow that is hommil ſall beir the wyte, and the awner thairof ſall recompence the damnage of the kow that is ſlane to his nichtbour, awner of the ſlane kow.

24. Ane ſwine that eitis hir gryſis ſall be ſtanit to deith, and hir fleſh forbiddin.

25. Ane ſwine that eitis uther men's corn, or wortis uther men's land, ſall be ſlane, but ony redreſs to the awner.

26. All uther beiſtis that eitis uther men's corn or graſs, ſall be poindit, quhill the awner thairof redreſs the skaithis done be thame.

27. Altaris, kirkis, images of ſainctis, oratories, chapellis, Preiſtis, and all eccleſiaſtical perſounis, ſall be haldin in reverence.

28. All feſtival and ſolemne dayis, faſtis, vigillis, and all uther ceremonies of the kirk, ſall be obſervit conform to the inſtitutioun of the kirk.

29. He that hurtis ane kirkman, in word or in deid, ſall be puniſht to the deith.

30. All ſepulturis ſall be haldin in reverence, and ane croce ſet on thame, that na man ſould ſtramp thairupon.

31. The place quhair ane man is ſlane, or buryit, ſall be ſevin zeiris unteillit.

32. The corps of ane deid man ſall be buryit effeirand to his gudis: Gif he was a Nobleman, and did greit actis for the commoun weill, his bodie ſall be buryit with funeral triumph, in this maner; Twa horſemen ſall paſs afoir him to the kirk, the ane arrayit in his beſt cleithing, beirand his armour and wappinis, on ane quhite horſe; the uther ſall paſs in dolorous weed, on ane black horſe; and quhen the corps is enterit in the kirk, the man with the black horſe ſall turn his back to the altar, and lamentablie deplore the deith of his maſter, and ſall depart the ſamin gait he came: The uther ſall offer his horſe, armour, and wappinis to the Preiſt, and burie him in magnificent ſepulture. This cuſtume in burying of Noblemen was abrogat efter be the pepill, and in redemptioun thairof thay payit v. *lib.* to the Preiſt of the Kirk.

It is ſtatute and ordanit, for augmentatioun of divine ſervice, and that kirkmen may the mair frelie give thair attendance to divine ſervice, and to ordour thame in gude living and religioun, that all kirkmen ſall be perpetuallie fré, and exonerat of all weiris, tributis, and publick exactiounis, that ſall happin to be raiſit or impoſit on the pepill be the King, or his ſucceſſouris, in time cuming. King *Gregorie. Chron. lib.* 10. *c.* 19.

Item, That thay ſall not be drawin befoir prophane Judges, bot allanerlie to be ſubmittit to thair ordinar Judges.

Item, That all Biſhoppis of this realme ſall have powar to decide befoir thame all actiounis pertening to faith of body, with powar to cauſe the pepill keip thair faith promittit to thair nichtbouris, and to puniſh thame for violatioun thairof.

Item, It ſall be leaſum to the ſaid kirkmen to mak lawis and conſtitutiounis for the weill of the Chriſtian faith and religioun.

Item, It ſall be leaſum to thame to diſcuſs all debaitis and actiounis concerning oblatiounis or teindis, teſtamentis, obligatiounis, or legacies; to interprete the lawis, and puniſh manſworn pepill, blaſphemaris of God and his ſainctis; to curſe all pepill rebelland to thair conſtitutiounis, and to inhibite thame to cum quhair ony divine ſervice is done: And that all perſounis accurſit be thame ſall bruik na heritage, nor be heird in judgment, untill thay be lauchfullie aſſoilzeit, bot ſall be exylit fra all gude companie, and na faith to be gevin to thair depoſitioun and witneſſing.

Item, All Princes of this realme, immediatlie efter thair coronatioun, ſall mak thair aith to defend the libertie and honour of the halie kirk, and kirkmen, and that thay ſall mak na derogatioun to the conſtitutiounis of the kirk.

King *Donaldus* VI. *Chron. lib.* 10. *c. ult.*

IT is ſtatute, that all pepill that blaſphemis God, or his ſanctis, or manſweir thameſels, or ſpeik of the Devil, ſall be brint with ane hait irne on thair lippis.

King *Kennethus* III. *Chron. lib.* 11. *c.* 10.

THE King beand deceiſt, his eldeſt ſone, or his eldeſt nepote, notwithſtanding quhatſumever age he be of, and thocht he wer born efter his father's deith, he ſall ſucceid to the crown.

The nepote gottin be the King's ſone ſall be preferrit to the nepote gottin on the King's dochter.

On the ſamin maner, the nepote gottin be the King's brother, ſall be preferrit to the nepote gottin on the King's ſiſter.

The ſamin law ſall be obſervit be all uther Nobles of this realme, in ſucceſſioun to thair heritage.

Quhen the King is zoung, ane Nobleman of greit prudence and auctoritie ſall be choſin governour of the realme, quhill the King becum to the age of fourtene zeiris; quhilk fourtene zeiris being outrun, the King ſall be fré to govern his realme be his awin auctoritie.

All uther heritouris ſall ſucceid to thair fatheris heritage, efter the iſche of xxi. zeiris; and within that time thay ſall be governit be thair curatouris; and quhill that zeir be outrun, thay ſall not be heard to acclame thair heritage.

King *Makbeth. Chron. lib.* 12. *c.* 4.

HE that is within ordouris ſall not anſwer befoir ane prophane Judge, bot ſall be remittit to his Judge ordinar.

The tenth part of all fruitis growing on the ground ſall be gevin to kirkmen, and God ſall be adorit with oblatiounis and prayeris.

He that perſeveris in contemptioun aganis the kirk, ſtandand curſit ane zeir, and will not be reconcilit thairto, ſall be repute enemie to the commoun weill: Gif he perſevere with indurat mind twa zeiris, all his gudis ſall be confiſcat.

He that is maid Knicht ſall be ſworn to defend widowis, commounis, and pupillis; and he that is maid King ſall be ſworn in the ſamin maner.

The eldeſt dochter ſall ſucceid to heritage, failzieing of the eldeſt ſone: And gif ony woman marie without conſent of the Lord of the ground, ſcho ſall tyne hir heritage.

Na

Na man ſall poſſede landis, rentis, offices or biggingis, be ony uther auctoritie, bot allanerlie be the King's licence.

Na office ſall be heritage bot during the King's pleaſour.

Na man ſall ſit in temporal or prophane actiounis, without commiſſioun of the King.

All conventioun, office and juſtice, ſall be led in the King's name and auctoritie.

He that makis band, or is ſworn man to ony uther man, bot allanerlie to the King, ſall be puniſht to the deith; and ilk man ſall be bund to defend the King aganis all uther living creaturis.

He that raiſis the King's lieges ſall be put to deith, and his gudis confiſcat, and all the pepill that ar gadderit on that ſamin maner.

He that followis ane man to the kirk, or market, or ony uther conventioun, ſall be puniſht to the deith, without he live be his induſtrie quhom he followis.

Ane horſe fed be commounis to ony uther uſe than to the labouring of the zeird, ſall be eſchete to the King.

Fulis, menſtrallis, bardis, and all uther ſic idill pepill, but gif thay be ſpeciallie licentiat be the King, ſall be compellit to ſeik ſum craft to win thair living: Gif thay refuſe, thay ſall be drawin like horſe in the pleuch or harrowis.

Howbeit the ſone be put in fie of the land, during the life of his father, be licence of the King, zit he ſall be diſheriſhit efter, gif his father be fund criminal to the King's Majeſtie.

A woman that is maryit with ony fré Baron or Lord, howbeit ſcho have na bairnis to him, ſall have the thrid of his landis efter his deith, and the remanent ſall be injoyit be his airis.

All greit Baronis ſall be inhibite to marie with uther, under the pane of deith, ſpeciallie gif thair landis and rowmis lyis togidder.

All armour and wapinis that ar born to ony uther effect than to the King's weiris, ſall be confiſcat, with all uther (the beirar or weirar) his movabill gudis.

The King's Capitane that buyis ony landis within the boundis quhair he is Capitane, ſall tine baith the landis and the money. Siclike, gif he marie his ſone or dochter, with ony folkis dwelland within his boundis, he ſall tine his office, and it ſall not be leaſum to his ſone to bruik his office.

The quhilkis all and ſindrie lawis foirſaidis wer abrogat be King Malcolm III. *ſurnamit* Canmoir, *as is manifeſt in the Chronicles, lib. 2. c. 9.*

IT is ſtatute and ordanit, that all fré Baronis ſall mak pit and gallowis, or jebbat, and draw-wellis, for puniſhing of theives, and uther criminal perſounis.

King *Malcolme* III. alias *Canmoir. Chron. lib. 12. c. 19.*

IT is ſtatute and ordanit, that the *Satterday*, fra xij. houris furth at noon, ſall be haldin halie day, and that the ſamin ſall be ſchawin to the pepill be the ſound of the bell; and that na prophane labour ſall be exerciſit fra that time furth quhill *Mononday*; and the pepill in the mene time to perſevere in divine ſervice.

King *William. Chron. lib. 13. c. 8.*

IT is ſtatute and commandit, that ſadillis, brydills, and all uther inſtrumentis pertening to the uſe of husbandrie, ly furth baith day and

Thomas Randulph, governour and

tutor to King *David* II. *Bruyſe. Chron. lib.* 15.

and nicht: And gif ony of thame happinis to be ſtollin or tane away, the Schiref of that ſchire ſall cauſe the ſamin ather to be reſtorit to the awner, or ellis ſall pay the ſamin on his awin purſe.

Item, It is defendit and forbiddin, that na vagabond nor idill perſoun ſall be reſſavit in ony town, without thay have ſum craft to win and debait thair living.

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G.R. III.